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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 419

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

E. C. ATKINS AND COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1946
CERTIORARI GRANTED SEPTEMBER 23, 1946

SUPREME COURT OF THE UNITED STATES

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2 In the United States Circuit Court of Appeals for the Seventh Circuit.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

E. C. ATKINS AND COMPANY, RESPONDENT

Certificate of the National Labor Relations Board

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90 and their affiliate, Local 1683," and, "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90 and Their Affiliate Local 1683, affiliated with the American Federation of Labor," the same being Cases Nos. 9–R–1200 and 9–C–1982, respectively, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto, are as follows:

Case No. 9–R–1200

(1) Copy of order, dated September 24, 1943, designating Thomas E. Shroyer as Trial Examiner for the National Labor Relations Board.

3 (2) Stenographic transcript of testimony held before Thomas E. Shroyer, Trial Examiner for the National Labor Relations Board, on September 24, 1943, together with all exhibits introduced into evidence.

(3) Copy of respondent's letter, dated September 28, 1943, requesting extension of time for filing brief.

(4) Copy of telegram, dated September 30, 1943, granting all parties extension of time for filing briefs.

(5) Copy of respondent's letter, dated October 9, 1943, requesting oral argument before the National Labor Relations Board.

(6) Copy of Decision, Findings of Fact, Conclusions of Law, and Direction of Election issued by the National Labor Relations Board October 19, 1943.

(7) Copy of respondent's petition for reconsideration of Decision and Direction of Election, dated October 19, 1943, oral argument thereon before the full Board, and memorandum in support thereof, dated October 28, 1943.

(8) Copy of order, dated November 2, 1943, denying aforesaid petition.

(9) Copy of election report issued by the Regional Director November 18, 1943.

(10) Copy of Certification of Representatives issued by the National Labor Relations Board November 29, 1943, together with affidavit of service thereof.

Case No. 9–C–1982

(11) Copy of order, dated January 31, 1944, designating Charles E. Persons as Trial Examiner for the National Labor Relations Board.

(12) Stenographic transcript of testimony held before Charles E. Persons, Trial Examiner for the National Labor Relations Board, on January 31, 1944, together with all exhibits introduced in evidence.

(13) Copy of Trial Examiner Persons' Intermediate Report, dated February 19, 1944 (annexed to Item (20) hereof).

(14) Copy of order transfering case to the National Labor Relations Board, dated February 23, 1944.

(15) Copy of respondent's letter, dated February 28, 1944, requesting oral argument before the National Labor Relations Board.

(16) Copy of respondent's exceptions to the Intermediate Report, dated March 6, 1944.

(17) Copy of notice of hearing for the purpose of oral argument before the National Labor Relations Board, dated April 19, 1944.

(18) Copy of notice of postponement of hearing for the purpose of oral argument before the National Labor Relations Board, dated April 28, 1944.

(19) Copy of appearances at the oral argument before the National Labor Relations Board, held on May 11, 1944.

(20) Copy of Decision and Order issued by the National Labor Relations Board, May 30, 1944, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the

National Labor Relations Board of the City of Washington, District of Columbia, this 24th day of August 1944.

[SEAL]

John E. Lawyer,
JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board.

5 Before the National Labor Relations Board

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

Order designating trial examiner

It is hereby ordered that Thomas E. Shroyer act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to Trial Examiners under Article III, Section 5 of the Rules and Regulations—Series 2, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., September 24, 1943.

[SEAL]

Frank Bloom,
FRANK BLOOM,
Chief Trial Examiner.

6 SEPTEMBER 28, 1943.

E. C. ATKINS & COMPANY
Re: Plant Guard Unit

Re: E. C. Atkins & Company—Cause No. 9–R–1200

MR. JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board,
Washington, D. C.

DEAR MR. LAWYER: The above designated case was heard on Friday, September 24, 1943, before trial examiner Schroyer at Indianapolis, Indiana. We desire to file a brief on behalf of the employer, and, under the rules of the board, this brief will be due on Friday, October 1, 1943. The report of the proceedings by the official reporter did not arrive in our office until this morning, Tuesday, September 28, 1943. The record consists of 98 typewritten pages and we believe we will be unable to examine it and prepare a printed brief within the regular time.

We therefore respectfully request a short extension of time for filing our brief, preferably until Friday, October 8, 1943.

Very truly yours,

BARNES, HICKAM, PANTZER & BOYD.
By (S) LEWIS D. SPENCER.

LDS:BB.

National Labor Relations

NLRB

JEL:JE

SEPTEMBER 30, 1943.

BARNES, HICKAM, PANTZER & BOYD,
1313 Merchants Bank Bldg., Indianapolis, Indiana.
F. M. RICHARDSON,
International Association of Machinists,
49½ South Delaware St., Indianapolis, Ind.

Re: E. C. Atkins 9-R-1200

All parties hereby granted to October 8 for filing briefs.

NATIONAL LABOR RELATIONS BOARD.

8 *Respondent's Exhibit 102*

PERMANENT FILE COPY

BARNES, HICKAM, PANTZER & BOYD

OCTOBER 9, 1943.

Case No. 9-R-1200

E. C. ATKINS and COMPANY
and
INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND ITS AFFILIATE, LOCAL 1683,

NATIONAL LABOR RELATIONS BOARD,
Shoreham Building, Washington, D. C.
Attention Mr. John Lawyer.

DEAR MR. LAWYER: I refer to the hearing in the above-entitled case on Friday, September 24, 1943, in Indianapolis, Indiana, at the conclusion of which Trial Examiner Shroyer advised all parties would be given seven days time (until October 1, 1943) in which to file briefs, if any; to the telegram from your Board confirming an extension of time in which to file such brief to October 8, 1943;

and to the subsequent telephone conversation between Mr. Spencer, of our office, and yourself, confirming an extension of time in which to *mail* the brief to midnight on October 9, 1943.

I accordingly enclose herewith four copies of the "Brief of E. C. Atkins and Company."

I also enclose a copy of my letter to Mr. F. M. Richardson, the representative of the IAM; and shall appreciate it if you will advise me whether any further proof of service of copies of the brief is necessary. I shall also appreciate it if you will acknowledge receipt of this letter with enclosures.

I shall also appreciate it if you will consider this letter as a request for oral argument. A careful reading of the Dravo case indicates that the principal question raised in the enclosed brief was not called to the attention of the Board in that case. The matter of the interpretation of the word "employee," as used in the National Labor Relations Act is of such importance that I believe oral argument should be heard upon this further point, which affects so many plants engaged in the war effort.

Yours very truly,

KURT F. PANTZER.

KFP/TB.
Encls.

9. Before The National Labor Relations Board

Case No. 9-R-1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

Mr. Kurt F. Pantzer and Mr. Lewis D. Spencer, of Indianapolis, Ind., for the Company.

Mr. F. M. Richardson and Mr. Walter B. Heisel, Jr., of Indianapolis, Ind., for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

Decision and direction of election

STATEMENT OF THE CASE

Upon petition duly filed by International Association of Machinists, District 90 and their affiliate, Local 1683, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of E. C. Atkins and Company, Indianapolis, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate

hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held in Indianapolis, Indiana, on September 24, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The company made a motion to dismiss the petition on the ground that plant-protection employees are not employees within the meaning of the National Labor Relations Act. The Trial Examiner reserved ruling. For reasons appearing below, this motion is denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board. Subsequent to the hearing, the Company requested oral argument before the Board.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE COMPANY

E. C. Atkins and Company, an Indiana corporation, is engaged at Indianapolis, Indiana, in the manufacture and sale of saws, tools, and armor plate. The Company operates two plants, both of which are located in Indianapolis, Indiana, and both of which are involved in this proceeding. During the year 1942 the Company purchased raw materials valued in excess of $500,000, approximately 80 percent of which was shipped from points outside the State of Indiana. During the same period the Company sold finished products valued in excess of $1,000,000, approximately 80 percent of which was shipped to points outside the State of Indiana. The Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District 90 and their affiliate, Local 1683, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.[1]

III. THE QUESTION CONCERNING REPRESENTATION

On August 18, 1943, the Union by letter requested recognition as the exclusive bargaining agent for the Company's plant-protection employees. The Company failed to answer the letter.

[1] International Association of Machinists has requested the Board to take judicial notice of its reaffiliation with the A. F. of L.

Subsequently, at a conference between the parties, the Company refused to recognize the Union claiming that the unit requested was inappropriate.

A statement prepared by a Field Examiner, introduced in evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.[2]

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that a unit consisting of all plant guards at the Company's two Indianapolis plants, excluding the chief and lieutenants constitute an appropriate unit. The Company agrees with the scope of the unit but contends that such a unit is not an appropriate one since plant guards, who are all auxiliaries of the military police, are not employees within the meaning of the Act. This contention has been advanced in other cases and has been found untenable.[3] More recently, in the Dravo Corporation[4] case, the Board fully discussed the question as to whether the militarization of guards alters the character of their employment, stating therein that the relationship of employer and employee still exists despite such militarization. No facts or arguments are presented here which would warrant departing from our prior decisions; accordingly, the Company's contention is rejected.

We find, that all plant guards at the Company's two Indianapolis plants, excluding the chief and lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed

[2] The Field Examiner's statement shows that the Union submitted 51 authorization cards, all of which bear apparently genuine signatures, and 44 of which bear names of persons whose names are listed on the Company's pay roll of September 10, 1943; there are 63 persons within the appropriate unit.

[3] Matter of Chrysler Corporation, Highland Park Plant, 44 N. L. R. B. 881; Matter of Phelps Dodge Copper Products Corp., 41 N. L. R. B. 973.

[4] Matter of Dravo Corporation, 52 N. L. R. B., No. 12.

during the pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with E. C. Atkins and Company, Indianapolis, Indiana, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by International Association of Machinists, District 90, and their affiliate, Local 1683, for the purposes of collective bargaining.

Signed at Washington, D. C., this 19 day of October 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,

JOHN M. HOUSTON,
Member,
National Labor Relations Board.

Board's exhibit 106

Before the National Labor Relations Board for the Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 96, AND THEIR AFFILIATE, LOCAL 1683

Petition of E. C. Atkins and Company for reconsideration of decision and direction of election dated October 19, 1943, and oral argument thereon before the full board

E. C. Atkins and Company, the employer involved in the above-entitled proceeding, respectfully shows the National Labor Relations Board that:

1. On October 19, 1943 the National Labor Relations Board, hereinafter referred to as the Board, entered its Decision and Direction of Election in this case.

2. One of the material issues therein is whether the relationship of employer and employee exists between the plant guards involved (hereinafter referred to as auxiliary military police) and E. C. Atkins and Company (hereinafter referred to as the Company) under the definition of "employer" in Section 2 (2) and "employee" in Section 2 (3) of the National Labor Relations Act.

3. The Decision and Direction of Election referred to above fails to discuss or consider in any manner the facts proved at the hearing with respect to the peculiar incidents and status of employment of the auxiliary military police, merely concluding that they are "plant guards, who are all auxiliaries of the military police" although the bulk of the 98-page official transcript and the 23 exhibits presented by the Company at the hearing deals with the peculiar incidents and status of employment of the auxiliary military police in great detail, differentiating therefrom "employees" as defined in the National Labor Relations Act.

4. The official transcript and the exhibits of the Company conclusively show that the auxiliary military police are hired by army officers, are supervised and controlled by army officers, and are discharged by army officers.

5. If the Board in its Decision and Direction of Election had found the facts incontrovertibly proved by the Company at the hearing, it would have been unable to conclude, as it did, "that the relationship of employer and employee still exists" or ever did exist between the auxiliary military police and the Company.

6. If the Board in its Decision and Direction of Election had found the facts incontrovertibly proved by the Company at the hearing, the inapplicability of the three prior decisions relied upon by the Board would be obvious.

7. The Board erred in concluding that the auxiliary military police were employees of the Company.

Wherefore, the Company prays that the Board reconsider its Decision and Direction of Election dated October 19, 1943, and grant the Motion to Dismiss the Petition for Certification made by the Company at the hearing. The Company respectfully requests permission to argue this petition before the full Board in Washington in support of said prayer.

KURT F. PANTZER.
Attorney for E. C. Atkins and Company.

14 MEMORANDUM IN SUPPORT OF PETITION

The 98-page official transcript and the 23 exhibits presented by the Company at the hearing were analyzed in the brief filed by the Company on October 11, 1943. The following summary indicates the facts proved at the hearing and ignored by the Board in its Decision and Direction of Election dated October 19, 1943.

Duties of Plant Guards.—The mission of a guard force of Auxiliary Military Police is to provide interior and exterior protection of the plant against sabotage, espionage and natural hazards and to serve with the Army in providing the protection to the plant and its environs in emergency situations (Exh. Company 4, Tr. 35). In this respect their general orders while on post are identical in wording and substance (Exh. Company 11) with those of a sentinel of the regular armed forces on guard duty as prescribed by the Basic Field Manual, Soldier's Handbook (Exh. Company 13). Specifically, their duties include directing traffic, escorting visitors, watching the gates and entrances, transporting cash within the plant, observing production workers, and other activities designed to prevent interruption of production (Tr. 21). They wear uniforms (Tr. 20), carry guns (Tr. 20), and salute army officers (Tr. 64). Their identification cards are issued by the War Department (Exh. Company 3, Tr. 27) and such cards differ materially from those issued to ordinary employees by the Company (Exh. Company 21, Tr. 94). The plant guards are given weekly instruction in the use of clubs and fists, pistol 15 marksmanship, military courtesy, methods of arrest, control and prevention of fires and similar topics by army officers (Tr. 30, 71).

Hiring of Plant Guards.—Army officers determine whether an applicant will be hired as a plant guard after they have made an independent investigation of his capacity, integrity, and patriotism (Exh. Company 4, Tr. 35, 51, 95). Each plant guard enters into a contract of employment with the United States of America (Exh. Company 2, Tr. 35) and receives a "Certificate of Enrollment" signed by Lieutenant Colonel Rasmussen of the United States Army (Exh. Company 6, Tr. 55).

Supervision and Control of Plant Guards.—Within each individual plant the Chief of the plant guards supervises their work and determines the shifts they work (Tr. 70), makes promotions (Tr. 67, 77) and has charge of discipline (Tr. 67). The Chief and his men are not subject to the orders of the Company's officers or other employees (Tr. 69, 73, 90, 91). The Chief in turn receives his instructions from the army officers (Tr. 59, 63, 79). All members of the guard force are subject to the Articles of War (Exh. Company 9, Tr. 60) and may be court-martialed or otherwise punished for violations thereof (Exh. Company 10, Tr. 62). Their work is controlled by the General Orders issued by army officers (Exhs. Company 10, 11, 12, Tr. 62).

Discharge of Plant Guards.—Dismissal of a plant guard requires the written approval of the army officer in charge (Exh. Company 10) and the Company does not have authority to discharge a plant guard permanently (Tr. 58). Upon termination of a plant guard's employment the army awards him a "Certificate of Meritorious Conduct" (Exh. Company 7, Tr. 57) unless he is discharged for misconduct, in which event only a formal release from his agreement with the United States Government is issued (Exh. Company 8, Tr. 58).

If the Board in its Decision and Direction of Election had included the facts established by the record and set forth above, it would have been unable to conclude, as it did, "that the relationship of employer and employee still exists" or ever did exist between the auxiliary military police and the Company. The interpretation of the National Labor Relations Act in this respect was recently considered by the Ninth Circuit Court of Appeals in Hearst Publications, Inc. et al. v. NLRB (June 10, 1943), 7 Labor Cases, par. 61, 659 (Cert. applied for, U. S. Supreme Court, Sept. 9, 1943, and granted Oct. 25, 1943). Judge Stephens held that the term "employee" should be given its ordinary and conventional meaning as developed under the common law and statutory enactments. The following language from the opinion is significant:

"Since the term 'employee' is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments. Such a result is in accord with the basic theory of statu-

tory interpretation that the legislature is presumed to use words in their ordinary sense unless that sense is contradicted by the context of a statute. Old Colony R. Co. v. Commissioner, 284 U. S. 552, 560; Kepner v. United States, 195 U. S. 100, 124; Levy's Lessee v. M'Cartee, 10 U. S. 47, 49; Commissioner v. Plestcheef (C. C. A. 9), 100 Fed. (2d) 62, 64. Since the principle is a long established one, it would seem that if Congress had intended
17 to enlarge upon the common meaning of 'employee,' it would have specifically so stated in the Act, which sets out specific definitions to severel terms used in the Act.

* * * * * *

"The term 'employee' has been interpreted under several federal statutes, other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit. In connection with the Federal Employers Liability Act (45 U. S. C. A. § 51) the Supreme Court stated:

"'We are of the opinion that Congress used the words "employee" and "employed" in the statute in their natural sense, and intended to describe the conventional relation of employer and employee.'"

Robinson v. Baltimore & Ohio Rr. Co., 237 U. S. 84, 94. In accord: Hull v. Philadelphia & Reading Ry. Co., 252 U. S. 475, 479. In connection with the Social Security Act (42 U. S. C. A. § 1004) this court asserted:

"However, in defining the required relationship, and in drawing the distinctions between an employee and an independent contractor, the regulations (defining an employee as one who is subject to the control of his employer with respect to what shall be done and as to how it shall be done) do no more than reiterate the familiar principles of the common law."

Anglim v. Empire Star Mines Co. (C. C. A. 9), 129 Fed. (2d) 914, 917. In accord: Jones v. Goodson (C. C. A. 10), 121 Fed. (2d) 176; Texas Co. v. Higgins (C. C. A. 2), 118 Fed. (2d)
18 636. A similar result was reached in connection with the Merchant Marine Act (46 U. S. C. A. § 688), Loe & Goldstein (C. C. A. 9), 101 Fed. (2d) 967, and with the Federal Safety Appliance Act (45 U. S. C. A. § 11), Stevenson v. Lake Terminal R. Co. (C. C. A. 6), 42 Fed. (2d) 357.

* * * * * *

"The question for decision as to each newspaper separate from any other paper is whether there is substantial evidence that the publisher exercises, or has the right to exercise, sufficient control over the activities of the newsboys defined in its appropriate unit to support the Board's decision that they were employees under § 2 (3) of the National Labor Relations Act."

Under the rule set forth in the Hearst Publications Case, the question for decision in this proceeding is whether there is substantial evidence in the record that the Company exercises, or has the right to exercise, sufficient control over the activities of the plant guards to support the Board's decision that they were employees under § 2 (3) of the National Labor Relations Act. The Decision and Direction of Election of the Board refers to no such evidence and in truth there is none. On the contrary the record affirmatively shows that the Company does not hire the plant guards, cannot control or supervise their work and does not discharge them.

The Board in its Decision and Direction of Election relied on its former decisions in Matter of Phelps Dodge Copper Products Corp., 41 N. L. R. B. 973 (June 15, 1942); Matter of Chrysler Corporation, Highland Park Plant, 44 N. L. R. B. 881 (October 7, 1942); and Matter of Dravo Corporation, 52 N. L. R. B. No. 12 (August 30, 1943). In the Phelps Dodge Case the company contended that the plant guards were a part of management, and therefore not employees within the meaning of the Act, a contention entirely different from the question presented in the present proceeding. The effect of the militarization of the plant guards on the employer-employee relationship was not discussed in the opinion. It is difficult to see, therefore, how this decision has any bearing on the present question of whether the Company has relinquished so much of its control over its plant guards to the Army that the relationship of employer and employee does not exist within the definition of those terms in the Act.

In the Chrysler Case the Board stated in its opinion:

"The employer's right to discharge for cause remains. Hiring, compensation for services performed, and general working conditions remain matters to be adjusted between the employer and employees through the usual employment contract."

In the present case the record clearly shows that the Company may not discharge a plant guard but may only relieve him of his duty temporarily (Tr. 57, 58). Also, hiring is not a matter to be adjusted between the employer and employees since the army officers determine whether an applicant will be hired (Tr. 51, 95). General working conditions are determined by the plant guard Chief (Tr. 67, 70, 77) who is responsible to an army officer (Tr. 59, 63), not to the Company (Tr. 69, 73, 90). The employment contract which the plant guards signs is with the United States of America (Exh. Company 2; Tr. 25). In all these respects the situation in the present proceeding is different from that in the

Chrysler Case, which accordingly has no application in the present proceeding.

In its Decision and Direction of Election the Board placed its principal reliance on the Dravo Case. In connection with the appropriate unit the union argued in that case that the fact the guards are sworn into reserve membership in the armed services was no reason for segregating them from other employes, whereas the company urged that this should prevent these employees from being represented by any union which represents any other category of personnel employed by the corporation. In deciding this sole issue the Board incidentally remarked that "the wages and duties of this group of personnel remained unchanged after their induction so that it is apparent that the proximate relationship of employer and employee still exists between the Company and the guards." The issue of whether the employee-employer relationship was present was thus not squarely presented or adequately considered. The finding of a "proximate relationship of employer and employee" is certainly not the interpretation of the Act contemplated by the Circuit Court of Appeals in the case of Hearst Publications, Inc., et al. v. N. L. R. B., supra. And as the Company pointed out in its original brief, it cannot reasonably be said in the present case that there has been no substantial change in the peculiar incidents and status of the relationship as result of supervision by the military authorities since the hiring, direction, supervision, and discharge of the plant guards is no longer within the control of the Company but is handled by the army officers.

21 In conclusion, it is the contention of the Company that whether an employer-employee relationship exists under the National Labor Relations Act depends upon the common law meaning of those terms. Hearst Publications, Inc., et al. v. N. L. R. B., supra. At common law the incidents of the employer-employee relationship were the hiring, control, and discharge of the employee by the employer. Hearst Publications, Inc., et al. v. N. L. R. B., supra; Bowman v. Pace Co., 119 F. (2d) 858 (C. C. A. 5, 1941); Williams v. United States, 126 F. (2d) 129 (C. C. A. 7, 1942); Texas Co. v. Higgins (C. C. A. 2, 1941); Mid-Continent Petroleum Corporation v. Vicars, 47 N. E. (2d) 972 (Indiana Supreme Court, 1943). These cases are fully discussed in the Company's original brief. In the present case the employer-employee relationship between the Company and the plant guards does not exist because the army officers hire the plant guards, control and supervise their work, and determine when they shall be discharged.

22 CONCLUSION.

The Board should reconsider its Decision and Direction of Election dated October 19, 1943, and should dismiss the Petition of the International Association of Machinists for Investigation and Certification of Representatives of auxiliary military police.

Respectfully submitted.

BARNES, HICKAM, PANTZER AND BOYD,
Attorneys for E. C. Atkins and Company,

KURT F. PANTZER,
LEWIS D. SPENCER,
Of Counsel.

Dated October 28, 1943.

23 Before the National Labor Relations Board

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

Order denying petition for reconsideration etc.

The Board having, on October 19, 1943, issued a Decision and Direction of Election in the above-entitled proceeding, and thereafter, on October 30, 1943, counsel for E. C. Atkins and Company having filed a Petition for reconsideration of the aforesaid Decision, for oral argument thereon, and Memorandum in support thereof, and the Board having duly considered the matter,

It is hereby ordered that the said Petition be, and it hereby is, denied.

Dated, Washington, D. C., November 2, 1943.

By direction of the Board:

[SEAL]

Milton A. Nixon,
MILTON A. NIXON,
Acting Chief, Order Section.

24 Before the National Labor Relations Board

9th Region

Case No. 9-R-1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683.

Report on ordered election

Pursuant to the Rules and Regulations of the National Labor Relations Board (herein called the Board), the undersigned hereby reports that the election heretofore directed by the Board in the above-entitled case was conducted in accordance with the notice of election attached hereto and with the following results:

Approximate number of eligible voters	56
Count of ballots:	
Total ballots cast	55
Total ballots challenged	0
Total void ballots	0
Total blank ballots	0
Total valid votes counted	55
Votes cast for International Association of Machinists, District 90, and their Affiliate, Local 1683	50
Votes cast against International Association of Machinists, District 90, and their Affiliate, Local 1683	5

The counting and tabulating were fairly and accurately done. Statements to such effect from the observers to the election are on file.

25 The undersigned finds that International Association of Machinists, District 90 and their affiliate, Local 1683, has been designated and selected by a majority of the employees in the bargaining unit found by the Board in its Decision in this proceeding to be appropriate and recommends that the Board so certify.

Dated at Cincinnati, Ohio, this 18th day of November 1943.

[SEAL]

Rosemary S. Macke.
ROSEMARY S. MACKE,
Acting Regional Director,
National Labor Relations Board.

26 Before the National Labor Relations Board

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

Certification of representatives

On November 17, 1943, pursuant to the Decision and Direction of Election issued by the Board herein on October 19, 1943,[1] an election by secret ballot was conducted under the direction and supervision of the Acting Regional Director for the Ninth Region (Cincinnati, Ohio). Thereafter, on November 18, 1943, in accordance with the Rules and Regulations of the Board, a Report on Ordered Election was issued and served upon the parties. No objections to the said report, or to the conduct of the ballot, have been filed by any of the parties.

The report shows that of the approximately 56 eligible voters, 55 cast valid votes, of which 50 were for International Association of Machinists, District 90, and their Affiliate, Local 1683, and 5 against.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3,

It is hereby certified that International Association of Machinists, District 90 and their affiliate, Local 1683 has been designated and selected by a majority of all plant guards at the two Indianapolis plants of E. C. Atkins and Company, Indianapolis, Indiana, excluding the chief and lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 29th day of November 1943.

[SEAL]

HARRY A. MILLIS,
Chairman.

JOHN M. HOUSTON,
Member.

National Labor Relations Board.

[1] 52 N. L. R. B., No. 249.

[Title omitted.]

27 *Affidavit as to service*

DISTRICT OF COLUMBIA, *ss:*

I, George A. Key, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 29th day of November 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Certification of Representatives to the following named persons, addressed to them at the following addresses: International Association of Machinists, District 90, and their affiliate Local 1683, Att: Messrs. F. M. Richardson & W. B. Heisel, Jr., 491½ South Delaware Street, Indianapolis, Indiana; E. C. Atkins and Company, 402 South Illinois Street, Indianapolis, Indiana; Messrs. Kurt F. Pantzer & Louis D. Spencer, 1313 Merchants Bank Building, Indianapolis, Indiana.

(S) GEORGE A. KEY.

Subscribed and sworn to before me this 29th day of November 1943.

[SEAL] KATHRYN B. HARRELL,
Notary Public, D. C.

My commission expires March 1, 1947.

28 Before the National Labor Relations Board

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Order designating trial examiner

It is hereby ordered that Charles E. Persons act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 3, of the National Labor Relations Board.

Dated, Washington, D. C., January 31, 1944.

[SEAL] Frank Bloom
FRANK BLOOM,
Chief Trial Examiner.

29 Before the National Labor Relations Board

Case No. 9-C-1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Order transferring case to the National Labor Relations Board

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington.

It is hereby ordered, *pursuant to Article II*, Section 32, of National Labor Relations Board Rules and Regulations—Series 3, that Case No. 9-C-1982 be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., February 23, 1944.

By direction of the Board.

JOHN E. LAWYER,
JOHN E. LAWYER,
Chief, Order Section.

30

FEBRUARY 28, 1944.

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90

Case No. 9-C-1982

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

GENTLEMEN: I am in receipt of the "Intermediate Report" of Trial Examiner Charles E. Persons, dated February 19, 1944, and filed in the above-entitled case, as well as the "Order Transferring Case to the National Labor Relations Board."

In accordance with the provisions of Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, I hereby request permission to argue orally before the Board upon its approval or disapproval of the Intermediate Report, and all other questions which may be raised in the case.

I desire you to note that this request is being made within ten days of February 23, 1944, and ask that you let me have acknowledgement of receipt of this request in writing.

Yours very truly,

(S) KURT F. PANTZER,
Attorney for E. C. Atkins & Company.

KFP:TB.

31 Before National Labor Relations Board
Washington, D. C.

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Statement of exceptions to intermediate report, record, and proceedings

The Respondent, E. C. Atkins and Company, herewith files its statement in writing setting forth its Exceptions to the Intermediate Report and to other parts of the record and proceedings in this case (including rulings upon all motions or objections), and in support thereof alleges:

I

DEFINITIONS

National Labor Relations Board is hereinafter referred to as the "Board."

E. C. Atkins and Company, the Respondent herein, is hereinafter referred to as the "Respondent."

International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, the Complainant herein, is hereinafter referred to as the "Union."

32 Case No. 9–R–1200, entitled "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90, and their affiliate, Local 1683, Petitioner," Notice of Hearing in which was dated September 16, 1943, and hearing in which was held September 24, 1943, is hereinafter referred to as the "Representation Case."

The Decision and Direction of Election, dated October 19, 1943, in the Representation Case, is hereinafter referred to as the "Decision in the Representation Case."

The "Certification of Representatives," dated November 29, 1943, in the Representation Case, is hereinafter referred to as the "Certification of Representatives."

Case No. 9–C–1982, entitled "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90, and their Affiliate, Local 1683, affiliated with the American Federation of Labor," Notice of Hearing in which was dated January

12, 1944, and hearing in which was held January 31, 1944, is hereinafter referred to as the "Unfair Labor Practice Case."

The "Intermediate Report," dated February 19, 1944, in the Unfair Labor Practice Case, is hereinafter referred to as "Intermediate Report in the Unfair Labor Practice Case."

II

Exceptions to Findings of Fact

The Respondent excepts to the Findings of Fact for the reasons stated.

A. Exceptions to Decision in Representation Case

Exception No. 1.—There is no finding in Finding of Fact II, entitled "The organization involved" that either (a) the "employees" of the respondent referred to are the Plant Guards which were the subject matter of the representation proceeding, or (b) the "employees" admitted to membership in the Union were "employees" of the Respondent within the meaning of Section 2, clause 3, of the National Labor Relations Act.

Exception No. 2.—There is no finding in the entire Findings of Fact that the Plant Guards stationed at the two Indianapolis Plants of the Respondent were "employees" within the meaning of any provision of the National Labor Relations Act.

Exception No. 3.—There is no finding in the Findings of Fact that the Respondent was an "employer" of the Plant Guards stationed at the two Indianapolis Plants of the Respondent within the meaning of Section 2, clause 2, of the National Labor Relations Act.

Exception No. 4.—There is no finding which sets forth as existing between the Respondent and the Plant Guards stationed at the two Indianapolis Plants of the Respondent any of the incidents of "employer" and "employee," as such incidents existed at common law, other than the inferential finding that "in the Dravo Corporation case, the Board fully discussed the question as to whether the militarization of guards alters the character of their employment, stating therein that the relationship of employer and employee still exists despite such militarization"; and such incorporation by reference of facts which may or not have existed in the Dravo Corporation case does not constitute a finding of fact with respect to the instant case within the meaning of Section 9 or Section 10 of the National Labor Relations Act so as to form the basis for a valid decision or order, as the case may be, in a representation case or an unfair labor practices case before this Board.

34 **Exception No. 5.—The finding that the facts in the instant case inferentially resembled the facts in the Dravo Corporation case is not a finding of fact upon the record in this case so as to make any decision or order rendered upon such inference or conclusion a binding order within the meaning of due process, as used in the Fifth Amendment to the Constitution of the United States; and consequently the Findings of Fact, Conclusions of Law, and Decisions, Directions and Orders heretofore rendered by the Board in this case are void and of neither judicial nor administrative effect.**

Exception No. 6.—The Board failed to find any of the facts (uncontrovertibly established by the overwhelming weight of the testimony), existing in the instant case, which differentiate the instant case from the facts found in the Dravo Corporation case, to wit:

(a) The "Agreement Between the United States of America and _____ Plant Guard," executed between each Plant Guard and the United States upon assuming a position as Plant Guard at the two Indianapolis Plants of the Respondent (Employer's Ex. No. 2).

(b) The special "Plant Guard Identification Guard," executed by Plant Guards, issued by the Auxiliary Military Police for Plant Guards stationed at the two Indianapolis Plants of the Respondent (Employer's Ex. No. 3); as opposed to the identification cards issued by the Respondent to its employees stationed at the two Indianapolis Plants of the Respondent (Employer's Ex. No. 21).

(c) The oath of office taken by each Plant Guard as a civilian auxiliary to the Military Police (Employer's Ex. No. 2).

(d) The four orders issued by the Continuous Security District Office of the War Department at Cincinnati, Ohio, dated May 10, 1943, May 11, 1943, May 12, 1943, and June 7, 1943 (Employer's Ex. Nos. 10, 11, 12, and 4).

35 **(e) Plant Guards are subject to court martial and were, and have been, court martialled, as members of the Military Forces (Employer's Ex. Nos. 2 and 9).**

(f) General Orders of a Plant Guard, applying to all posts at the two Indianapolis Plants of the Respondent, are substantially similiar in all relevant respects to the general orders of sentinels, as prescribed by the Basic Field Manual of the Soldier's Handbook, issued by the War Department for troops in active service on July 23, 1941 (Employer's Ex. Nos. 11 and 13).

(g) Plant Guards are enrolled in the Auxiliary Military Police of the Army of the United States pursuant to a "Certificate of Enrollment," executed by a commissioned officer or officers of the United States Army (Employer's Ex. No. 6).

(h) Plant Guards who, upon discharge, have faithfully served as an auxiliary to the Military Police of the Army of the United States, are given a "Certificate of Meritorious Conduct," executed by a commissioned officer or officers of the United States Army (Employer's Ex. No. 7).

(i) Plant Guards who are discharged for cause are not entitled to a Certificate of Meritorious Conduct but are discharged informally by a commissioned officer of the United States Army (Employer's Ex. No. 8).

(j) The Respondent had no authority to hire any member of the Auxiliary Military Police but merely to recommend applicants for positions as Plant Guards, a commissioned officer in the United States Army, stationed in Cincinnati, Ohio, first investigating all such applicants and subsequently authorizing their permanent employment.

(k) The Respondent had no authority to discharge any member of the Auxiliary Military Police but merely to recommend discharge, a commissioned officer in the United States Army, stationed in Cincinnati, Ohio, having the sole right, after investigation, to effectuate a discharge.

(l) None of the incidents of the relationship between employer and employee at common law existed between the Respondent and the Plant Guards stationed at the two Indianapolis Plants of the Respondent with the sole exception of the incident that the Respondent paid the wages of such Plant Guards.

(m) The Respondent had absolutely no authority with respect to the duties of the Plant Guards stationed at the two Indianapolis Plants of the Respondent, or the way in which such duties were carried out.

(n) The Plant Guards stationed at the two Indianapolis Plants of the Respondent received their instructions and training at a special school conducted for the purpose by the United States Army.

And consequently such failure to find constitutes lack of due process in violation of the Fifth Amendment to the Constitution of the United States.

Exception No. 7.—There is no support for the finding that "at a conference between the parties, the Company refused to recognize the Union, claiming that the unit requested was not appropriate" (page 2) (See Transcript of September 24, 1942, pages 12, 17 and 87). As a matter of fact the reason which Respondent assigned for not recognizing the Union was that the Plant Guards were not "employees," and the Respondent was not an "Employer," within the meaning of those words as used in the National Labor Relations Act.

Exception No. 8.—The finding that "the Union represents a substantial number of 'employees' in the unit hereinafter found to be appropriate," is unsubstantiated by relevant testimony inasmuch as it is based upon the statement of a Field Examiner and evidence, which the Respondent never had an opportunity to examine or cross-examine, and such finding is consequently in violation of due process as prescribed by the Fifth Amendment to the Constitution of the United States.

Exception No. 9.—There is no evidence that "a question affecting commerce has arisen concerning the representation of 'employees' of the Company within the meaning of Section 9 (c) and Section 2 (7) of the National Labor Relations Act."

37 Exception No. 10.—There is no evidence to support the finding that "all plant guards at the Company's two Indianapolis Plants, * * * constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act."

Exception No. 11.—The Trial Examiner erred in denying the Respondent's "Application for Subpoena Duces Tecum Directed at F. M. Richardson to Produce Union Records" (Employer's Ex. No. 1) because such denial constituted a deprivation of due process under the Fifth Amendment to the Constitution of the United States.

Exception No. 12.—The Trial Examiner erred in admitting in evidence, over the objection of the Respondent, "Statement of Field Examiner Concerning Claims of Authorization for the Purpose of Representation," dated September 11, 1943 (Board's Ex. No. 4), inasmuch as the Respondent was not permitted to cross-examine the individual who made the statement and to examine the data on which it was based, thereby depriving the Respondent of due process as guaranteed by the Fifth Amendment to the Constitution of the United States.

B. EXCEPTIONS TO THE INTERMEDIATE REPORT IN THE UNFAIR LABOR PRACTICE CASE

Exception No. 13.—The finding that "Local 1683 admits to membership plant guards 'employed' by the respondent," is unsubstantiated by the evidence in the record or by any evidence found in the Findings of Fact.

Exception No. 14.—There is no finding that the Plant Guards were "employees" of the Respondent within the meaning of that word as used in the National Labor Relations Act.

Exception No. 15.—There is no finding that the Respond-
38 ent was an "employer" within the meaning of that word as used in the National Labor Relations Act.

Exception No. 16.—The statement that "no contention was advanced in the present proceeding attacking the Board's allegation that the Union is still the representative of the majority of the employees in the appropriate unit" is unsupported by the evidence because of the allegation of paragraph 4 of the "Answer of Respondent, E. C. Atkins and Company."

Exception No. 17.—The finding (lines 21 to 32 of the Intermediate Report in the Unfair Labor Practice Case) that "all the plant guards * * * constitute a unit appropriate for the purposes of collective bargaining" in accordance with the "Board's previous determination of the unit question," is void because it is based entirely upon its determination of the same question in the Representation Case. Inasmuch as the determination in the Representation Case was based upon facts supporting the finding and was in disregard of uncontrovertible facts established by the overwhelming weight of the testimony in the Representation Case which differentiate the Representation Case from the facts in the Draco Corporation case, such further finding in the Unfair Labor Practice Case is also unsupported by the evidence.

Exception No. 18.—The Intermediate Report in the Unfair Labor Practice Case has failed to reexamine the facts in the Representation Case or to examine such facts anew in the Unfair Labor Practice Case, all as set forth in the two briefs filed in the Representation Case and resubmitted as part of the record in the Unfair Labor Practice Case (Board's Ex. Nos. 105 and 106).

Exception No. 19.—There is no evidence that "a question affecting commerce has arisen concerning the representation of 'employees' of the Company within the meaning of Section 9 (c) and Section 2 (7) of the National Labor Relations Act."

Exception No. 20.—The Trial Examiner erred in denying the "Application for Subpoena Duces Tecum Directed at F. M. Richardson to Produce Union Records" (Respondent's Ex. 101) because such denial constituted a deprivation of due process under the Fifth Amendment to the Constitution of the United States.

Exception No. 21.—There is no evidence to sustain the finding that "the Respondent refused to bargain collectively with the Union as the exclusive representative of the 'employees' in the appropriate unit, and that the Respondent has thereby interfered with, restrained and coerced its 'employees' in the exercise of the rights guaranteed in Section 7 of the Act," because the Plant Guards are not "employees" of the Respondent.

Exception No. 22.—There is no evidence to support the finding that "the activities of the respondent * * * have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

III

EXCEPTIONS TO CONCLUSIONS OF LAW

The Respondent excepts to the following conclusions of law for the reasons stated:

A. EXCEPTIONS TO DECISION IN REPRESENTATION CASE

Exception No. 23.—The Board was in error in directing an election by secret ballot among the Plant Guards, inasmuch as such Plant Guards were not "employees" of the Respondent, and to the extent that such direction of election was intended to bind the Respondent as the "employer" of such Plant Guards.

Exception No. 24.—The direction of election is void because the facts found by the Board do not warrant such a direction of election as against the Respondent.

Exception No. 25.—The direction of election is not supported as a matter of law and is in violation of due process as prescribed by the Fifth Amendment to the Constitution of the United States.

B. EXCEPTION TO THE INTERMEDIATE REPORT IN THE UNFAIR LABOR PRACTICE CASE

Exception No. 26.—The conclusion that the Union is a "Labor organization within the meaning of Section 2 (5) of the Act" is unsupported by any evidence if the implication is to be drawn therefrom that such Union numbers among its membership any "employees" of the Respondent within the meaning of that word as used in the National Labor Relations Act as concluded in paragraph 1.

Exception No. 27.—There is no evidence to support the conclusion that "all plant guards * * * have constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act," as concluded in paragraph 2.

Exception No. 28.—The Union has never been the "exclusive representative of all 'employees' in said unit," within the meaning of the word "employees" as used in the National Labor Relations Act, as concluded in paragraph 3.

Exception No. 29.—The Respondent at no time refused to bargain collectively with any exclusive representative of its "employees," as concluded in paragraph 4.

Exception No. 30.—The Respondent has never, with reference to the Plant Guards stationed at its two Indianapolis Plants, interfered with, restrained, and coerced "employees" in the exercise of the rights guaranteed in section 7 of the Act or engaged in any

unfair labor practices within the meaning of Section 8 (1) of the Act, as concluded in paragraph 5.

Exception No. 31.—The Respondent at no time was guilty of any unfair labor practices as concluded in paragraph 6.

IV

Exceptions to Recommendations in the Intermediate Report in the Unfair Labor Practice Case

Exception No. 32.—Recommendation 1 is not supported by the facts or the law because the Plant Guards at the two Indianapolis Plants of the Respondent are not "employees" of the Respondent as an "employer," within the meaning of those two words as used in the National Labor Relations Act.

Exception No. 33.—Recommendation 2 is not supported by the facts or the law because the Plant Guards at the two Indianapolis Plants of the Respondent are not "employees" of the Respondent as an "employer," within the meaning of those two words as used in the National Labor Relations Act.

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V

General Exceptions

The Respondent further excepts to the Intermediate Report, Record, and Proceedings in this case, for the reasons stated:

Exception No. 34.—The relationship of employer and employee, with its various incidents, has never existed as between the Respondent and the Plant Guards in the instant case, and consequently the relationship between the Respondent and such Plant Guards is not subject to the jurisdiction of the National Labor Relation Board under any of the provisions of the National Labor Relations Act.

Exception No. 35.—The Union purports to represent Plant Guards at various other plants in the Indianapolis area, which Plant Guards have not been sworn into the Military Service under the articles of war; and the collective bargaining agreements executed between the Union and the corporations at which such Plant Guards are stationed, respectively, would, if produced by the Union, have been shown to contain provisions respecting seniority, discipline, handling of grievances, vacations, hours of work, and other incidents of tenure, which are incompatible with the articles of war and military orders pursuant to which the Auxiliary Military Police at the Plants of the Respondents are subject to the jurisdiction of the Continuous Security District Office of

the War Department of the United States of America, located in Cincinnati, Ohio; and consequently any order directing the Respondent to bargain with respect to such incidents of em-
43 ployment with the Plant Guards at the Plants of the Respondent is void and of no force and effect.

Exception No. 36.—The Decision in the Representation Case and the Intermediate Report in the Unfair Labor Practice Case are both void because the National Labor Relations Board denied the repeated written requests of the Respondent for permission to appear before the Board and make oral argument of the issues raised by the Respondent; the Respondent never having been permitted to address argument respecting Respondent's points to any member or representative of the Board, who prepared the Decision in the Representation Case, the Certification thereon entered November 29, 1943, or the Intermediate Report in the Unfair Labor Practice Case.

Wherefore, the Respondent prays that the Board accept the foregoing "Statement of Exceptions to Intermediate Report, Record, and Proceedings," filed for record on or prior to Thursday, March 9, 1944 (the latter date being fifteen days from the date of the entry of the order transferring the case to the Board), in order that the Respondent's exceptions taken herein may be taken and protected pursuant to the provisions of Article I, Section 33, of the Rules and Regulations, Series 3, of the National Labor Relations Board; that the record in the Representation Case be made a part of the record in the Unfair Labor Practice Case as contemplated by the provisions of Section 9 (d) of the National Labor Relations Act; that the Board accept the two briefs heretofore filed by the Respondent (Board's Ex. Nos. 105 and 106) as the briefs permitted by Section 33 of said Rules and Regu-
44 lations; and that the Respondent be permitted to argue its points orally before the Board upon the issues raised by such Statement of Exceptions and said Briefs.

Dated at Indianapolis, Indiana, March 6, 1944.

E. C. ATKINS AND COMPANY,
By BARNES, HICKAM, PANTZER & BOYD,
By KURT F. PANTZER,
Its Attorneys,
1313 Merchants Bank Building, Indianapolis, Indiana.

KURT F. PANTZER,
LEWIS D. SPENCER,
Of Counsel.

46 Before National Labor Relations Board

Washington, D. C.

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Notice of hearing

Please take notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, May 4, 1944, at 10:30 a. m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., April 19, 1944.

[SEAL]

John E. Lawyer,
JOHN E. LAWYER,
Chief, Order Section.

47 Before the National Labor Relations Board

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Notice of postponement of hearing

Please take notice that the hearing for the purpose of oral argument previously scheduled in this matter for Thursday, May 4, 1944, at 10:30 a. m., in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., is hereby postponed to

Thursday, May 11, 1944, at 10:30 a. m., or as soon thereafter as the Board may hear you, at the same place.

Dated, Washington, D. C., April 28, 1944.

By direction of the Board:

[SEAL] John E. Lawyer,
JOHN E. LAWYER,
Chief, Order Section.

48 Before National Labor Relations Board

Date: 5/11/44
Time began: 10:30
Time ended: 11:25
Board Members present: 1. ———; 2. Reilly; 3. Houston.

Oral argument

Case No. 9–C–1982. Name: E. C. Atkins & Co.

Appearances: (A) *Of Counsel to the Board*—Review Attorney: M. E. Harris; (B) *For the Company*—Name: Kurt F. Pantzer, 1313 Merchants Bank Bldg., Indianapolis, Indiana; (C) *For the Union*—Name: L. O. Thomas, Machinists Bldg., Washington, D. C.

49 Before the National Labor Relations Board

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Decision and order

On February 19, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent duly filed exceptions to the Intermediate Report and supporting briefs. Pursuant to notice, oral argument, in which the respondent and the Union participated, was held before the Board in Washington, D. C., on May 11, 1944.

The Board has considered the rulings of the Trial Examiner, and finds that no prejudicial error was committed. The rulings

are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following addition:

The respondent contends that the guards involved in this proceeding are no longer the respondent's employees, but are employees of the United States of America by reason of having become civilian auxiliaries of the Military Police. We find this contention without merit. The United States of America does not claim that the guards are its employees. On the contrary, the agreement which each guard signs with the United States of America in order to obtain or retain employment with the respondent states in part as follows:

"* * * I, [name of guard], who have been or am about to be employed by [the respondent] as a guard at [the respondent's Indianapolis plants] for the purpose of guarding certain war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that * * * I am subject to military law during the period of my employment."

The record shows that the guards are interviewed for employment by the respondent and not by the United States of America, and are hired by the respondent; that their discharge is ordinarily initiated by the respondent; and that during their employment they are paid by the respondent, at rates set by the respondent and not by the United States of America. According to Chief Guard Henry A. Johnston, a witness called by the respondent in the hearing in the representation case, he is in command of all the guards at one of the plants and works "very closely" and "cooperates" with the respondent's representatives. Moreover, Johnston admitted that the respondent could temporarily suspend a guard from duty. Cyrus E. Wood, the respondent's personnel director, who corroborated Johnston's testimony as related above, referred to the guards at the plants involved as the respondent's employees, and further testified that the respondent makes the "necessary pay-roll deductions" before paying them their wages.

However, counsel for the respondent claimed at the oral argument before the Board that since the respondent could act for the most part only in an advisory and tentative manner, subject to the paramount approval or disapproval of the appropriate military authorities, the respondent retained virtually no control over the guards; and that there were virtually no subjects remaining on which it could bargain collectively with the guards' duly selected

representative. It is true that for reasons of national security the respondent may have surrendered to the military authorities many of the attributes of control which it would normally possess over its plant guards. It is clear, however, that the respondent still retains a sufficient residual measure of control over the terms and conditions of employment of the guards so that the guards should not be deprived of the rights guaranteed in the Act. Under the circumstances and upon the entire record, we find, as we did in the preceding representation case, that the guards are employees of the respondent.[1]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, E. C. Atkins and Company, Indianapolis, Indiana, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, as the exclusive representative of all plant guards at its two Indianapolis plants, excluding the chief, lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, as the exclusive representative of all plant guards at its two Indianapolis plants,

[1] See Matter of Chrysler Corporation, Highland Park Plant, 44 N. L. R. B. 881, 883, where we stated in part as follows: "The War Department has recently * * * [made] plant protection employees at plants producing war materials civilian auxiliaries of the military police. Under appropriate Army supervision, they are being trained and equipped to meet the additional responsibility placed upon them. The Company contends that, even if their ordinary duties do not bar them from rights guaranteed under the Act, this military regulation changes their employment status and that they are no longer 'employees' within the meaning of the Act. We do not agree.

cluding the chief, lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment:

(b) Post immediately in conspicuous places throughout its two Indianapolis plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of May 1944.

[SEAL]

GERARD D. REILLY,
Member.

JOHN M. HOUSTON,
Member.
National Labor Relations Board.

Before the National Labor Relations Board

Trial Examining Division, Washington, D. C.

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Messrs. Thomas E. Shroyer and Allen Sinsheimer, Jr., for the Board.

Messrs. Kurt F. Pantzer, and Lewis D. Spencer, of Indianapolis, Indiana, for the respondent.

Messrs. F. M. Richardson, Carl Cedarquist, and William J. Layton, of Indianapolis, Indiana, and Mr. Van B. Carter, of Cincinnati, Ohio, for the Union.

Intermediate report

STATEMENT OF THE CASE

Upon a charge duly filed on December 23, 1943, by the International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated January 12, 1944, against E. C. Atkins and Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that all plant guards at the two Indianapolis plants of the respondent, excluding the chief and lieutenants and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining; (2) that on November 29, 1943, the Board certified the Union as the exclusive representative of the employees of the respondent in such unit; (3) that on or about December 14, 1943, and at all times thereafter the respondent, although duly requested, refused to bargain collectively with the Union as the exclusive representative of all its employees in the said appropriate unit; and (4) that by such refusal the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

53 On January 27, 1944, the respondent filed its answer admitting certain allegations of the complaint concerning its business operations and the proceedings of the Board leading to the certification of the Union, but denying that its plant guards are employees within the meaning of the Act and also denying that it has committed any unfair labor practices. The paragraphs from the respondent's answer which set forth its affirmative contentions are here quoted in full:

"13. The Respondent further alleges that the Respondent is not, and cannot be, an employer within the meaning of Section 2 of the National Labor Relations Act, or any of its subdivisions, with respect to the "plant guards" referred to in the Complaint, because all of them were "auxiliary military police" under the jurisdic-

tion and control of the Continuous Security District Office of the War Department of the United States of America, located in Cincinnati, Ohio; and because all such "auxiliary military police" were in the Federal Military Service at all times alleged in the Complaint.

"14. The Respondent further alleges that the "employer" of the "plant guards," referred to in the Complaint, is the United States of America, and that consequently the Respondent cannot be their "employer" within the meaning of Section 2, subdivision 2 of the National Labor Relations Act.

"15. The Respondent further alleges that the relationship of employer and employee, with its various incidents, has never existed as between the Respondent and the plant guards referred to in the Complaint, and that consequently the relationship between the Respondent and such plant guards is not subject to the jurisdiction of the National Labor Relations Board under any of the provisions of the National Labor Relations Act."

In its decision[1] in the representation case upon which the Board's complaint relies for the establishment of the Union's position, as the statutory representative of the employees in an appropriate unit, the Board said:

The Company agrees with the scope of the unit but contends that such a unit is not an appropriate one since plant guards who are all auxiliaries of the military police, are not employees within the meaning of the Act. This contention has been advanced in other cases[2] and has been found untenable. * * * No facts or arguments are presented here which would warrant departing from our prior decisions; accordingly the Company's contention is rejected.

Two other contentions advanced by the respondent in its answer have also heretofore been disposed of by the Board. The respondent contends that the Board's Decision and Direction
54 of the Election and the Certification are void, "because the [Board] denied repeated written requests of the respondent for permission to appear before the Board and make argument of the issues raised by the respondent." The Board in its Decision denied such a request for oral argument and in disposing of the respondent's Petition for Reconsideration of the Decision again denied a request for oral argument.

[1] Matter of E. C. Atkins and Company and International Association of Machinists, District 90 and their affiliate Local 1683, 52 N. L. R. B. 1470. The entire record in this case was incorporated by reference in the instant proceeding. This fulfills the request of the respondent in paragraph 19 of its answer for "leave to incorporate all the objections and exceptions in such record by reference thereto, as defenses to the complaint."

[2] The Board cited: Matter of Chrysler Corporation, Highland Park Plant, 44 N. L. R. B. 881; Matter of Phelps Dodge Copper Products Corp., 41 N. L. R. B. 973; and Matter of Dravo Corporation, 52 N. L. R. B. 322.

Again the respondent contends in its answer that "the hearing was held without due process of law because of the denial, in part, of the Respondent's application for subpenas duces tecum * * * and that consequently said decision and direction of election is void and of no force and effect against the Respondent." The Board in its decision affirmed this ruling of the Trial Examiner. Hence this matter has been disposed of except for additional requests presented in the present proceedings calling for copies of collective bargaining agreements between the Union and employers in the Indianapolis area and for records of proceedings had thereunder. These requests were denied by the undersigned [3] as similar in content and purpose to requests the denial of which are affirmed by the Board.

Pursuant to notice, a hearing was held at Indianapolis, Indiana, on January 31, 1944, before Charles E. Persons, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by certain of its officials. All parties participated in the hearing. Full opportunity to be heard, to examine, and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing all parties waived their right to participate in oral argument before the Trial Examiner and to present briefs for his consideration.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondent [4]

E. C. Atkins and Company, the respondent, is an Indiana corporation, having its principal offices in Indianapolis where it operates two plant, engaged in the manufacture and sale of saws, tools, and armor plate.

The principal raw materials used in such manufacturing are steel, castings and lumber. During the calendar year 1943 the raw materials purchased cost in excess of $500,000. Approximately 80 percent [5] of such raw materials are purchased and shipped in interstate commerce from points outside the State of Indiana.

In the same period the gross sales of the respondent to the United States Government and to jobbers, dealers, subcontractors and direct to manufacturing consumers, were in excess of $1,000,000.

[3] Through error this ruling does not appear in the transcript of testimony. It is here repeated *nunc pro tunc*.

[4] These findings are based on a stipulation of the parties incorporated in the record and on allegations in the complaint admitted by the respondent in its answer.

[5] The transcript of testimony incorrectly reported this percentage as "eight." The undersigned hereby orders that the transcript on page 20 line 1 be corrected by substituting eighty for "eight."

Approximately 80 percent in value of such products were shipped by rail and truck to customers outside the State of Indiana.

55 During the calendar year 1944, to the date of this hearing, the manufacturing and selling operations of the respondent have continued substantially along the same lines as in 1943.

The respondent advertises through industrial magazines and periodicals.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Plant Protection Lodge No. 1683 is a labor organization whose membership is confined to plant guards in the Indianapolis area. It is affiliated, through District No. 90, with the International Association of Machinists which, in turn, is affiliated with the American Federation of Labor. Local 1683 admits to its membership plant guards employed by the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

The respondent's main plant in Indianapolis covers two entire city blocks and has been in operation since 1857. The Federal Government built and equipped the Fall Creek Ordnance Plant which is operated by the respondent under lease. Since 1937 the United Steel Workers of America, CIO and the respondent have maintained contractual relations covering in general all production workers in both plants but excluding certain craft groups and plant guards. This contract currently provides for a union shop and covers over 1200 employees. The sawsmiths are a highly skilled group. In the two plants about 60 are employed. They are closely organized in Sawsmiths Local Union No. 18,548 affiliated with the A. F. of L. and have had collective bargaining agreements with the respondent "for a number of years." [6] Their current contract provides for a closed shop.

Plant Protection Lodge No. 1683 was chartered by the International Association of Machinists on April 2, 1943. When a claim to represent a majority of the Plant Protection employees of the respondent, presented by letter dated August 18, 1943, was ignored, the Union on September 14, 1943, petitioned the Board for Investigation and Certification of Representatives. After hearing on September 24, 1943, the Board issued its Decision and Direction of Election on October 19, 1943. An election was duly

[6] *See Matter of E. C. Atkins and Company and United Steel Workers of America Local 15, CIO*, 47 N. L. R. B. 479.

held on November 17 in the appropriate unit defined by the Board in its decision. The Union received a majority of the votes cast. Accordingly the Board on November 29, 1943, "certified that International Association of Machinists, District 90 and their affiliate, Local 1683 has been designated * * * as the exclusive representative of all such employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

B. The refusal to bargain collectively with the Union

1. The appropriate unit and representation by the Union of a majority therein

The complaint alleges that all plant guards at the two Indianapolis plants of the respondent, excluding the chief and lieu-
56 tenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. This is the appropriate unit found by the Board in its Decision and Direction of Election. The Company does not contest either the combining of the two plants in a single unit or the various inclusions and exclusions in the defined unit.

As noted above an election was held on November 17, 1943, under the Board's supervision. Of 65 valid votes counted, 50 were for and 5 against International Association of Machinists, District 90, and their affiliate Local 1683. No objections to the Regional Director's report on this election was filed by any party.[7] On November 29, 1943, the Board accordingly certified the Union as the statutory representative of the employees in the appropriate unit defined in its Decision. No contention was advanced in the present proceeding attacking the Board's allegation, that the Union is still the representative of the majority of the employees in the appropriate unit. The undersigned finds that the Union is the representative of a majority of the employees in the said unit.

The undersigned finds in accordance with the Board's previous determination of the unit question and its certification of the Union that all plant guards at the respondent's Indianapolis plants, excluding the chief and lieutenants and all other supervisory em-

[7] Paragraph 5 of the respondent's answer contains the statement: "the Respondent denies that such secret ballot election was properly conducted." When questioned at the hearing as to the connotation intended, respondent's counsel replied: "There is no connotation intended by that language that the election was conducted other than in a very fair and accurate way and that the ballots were cast as shown by the certificate, that the ballots were counted and that the results were as shown. In other words, on the matter of fairness of the election, there is no contention."

ployees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. It is further found that the International Association of Machinists, District 90, and their affiliate, Local 1683 is and has been at all times since November 29, 1943, the statutory representative of the employees within the appropriate unit.

2. The refusal to bargain

At some time between December 1 and 20, 1943 the Union sent to the Company by mail a copy of a proposed agreement. Although the document was not accompanied by a covering letter the respondent agrees that its presentation was, in effect, a request for collective bargaining.[8]

Under date of December 20, 1943, the respondent through Cyrus E. Wood, its personnel director, wrote Richardson as business representative of the Union, acknowledging receipt of the proposed agreement, and calling attention to the respondent's contention that auxiliary military police were in no sense employees of the respondent. The final paragraph of this letter read: "Under the circumstances may we suggest that you take such other action as you see fit to establish our obligation to bargain with you respecting such auxiliary military police."

57 Answering paragraph 8 of the complaint which alleges that "on or about December 14, 1943, and at all times thereafter, the respondent refused, and has since continued to refuse, to bargain collectively with the Union as the exclusive representative of the employees in the unit described," the respondent "admits the facts alleged" in this paragraph of the complaint, "except to the extent of the conclusion inferable therefrom that the 'employees' therein described were employees of the respondent within the meaning of that word as used in the [Act]." Near the close of the hearing in the present proceeding respondent's counsel stated "That the respondent will, if it is finally determined that the respondent's contention as to the definition of the word 'employee' is incorrect, gladly bargain with the Union in this case."

On all of the above, the undersigned finds that on December 20, 1943, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[8] Respondent's counsel said: "Quibbling is possible, but I should say that even if the Company has not had much experience with such requests, the attorney for the Company has had, and the attorney for the Company should have advised the Company that it was such a request."

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relations to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent has refused to bargain collectively with the Union as the exclusive reresentative of its employees in the appropriate unit. In order to effectuate the policies of the Act, the undersigned will recommend that the respondent, on request, bargain collectively with the Union as the exclusive representative of its employees within the unit herein found to be appropriate.

Upon the basis of the forgoing findings of fact, and upon the entire record in the case, the undersigned makes the folowing:

CONCLUSIONS OF LAW

1. International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor is a labor organization within the meaning of Section 2 (5) of the Act.

2. All plant guards at the two Indianapolis plants of the respondent, excluding the chief and lieutenants and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, at all times material herein have constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

58 3. International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor was on November 29, 1943, and at all times thereafter has been, the exclusive representative of all employees in said unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on December 20, 1943, and at all times thereafter to bargain collectively with International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with

the American Federation of Labor as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case the undersigned recommends that the respondent, E. C. Atkins and Company, Indianapolis, Indiana, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor as the exclusive representative of all plant guards at its two Indianapolis plants, excluding the chief and lieutenants and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, as the exclusive representative of all plant guards at its two Indianapolis plants, excluding the chief, and lieutenants and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places throughout its two Indianapolis, Indiana, plants and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to the employees stating: (1) that the respondent will not

59 engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Ninth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

Charles E. Persons,
CHARLES E. PERSONS,
Trial Examiner.

Dated: February 19, 1944.

60 [Title omitted.]

Affidavit as to service

DISTRICT OF COLUMBIA, *ss:*

I, Georgie Coates, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th

day of May 1944, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Report] to the following named persons, addressed to them at the following addresses: International Association of Machinists, District 90 and Local 1683, Att: Messrs. F. M. Richardson, Carl Cedarquist and Wm. J. Layton, 49½ S. Delaware Street, Indianapolis, Indiana; E. C. Atkins and Company, 402 S. Illinois Street, Indianapolis, Indiana; Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana.

(S) GEORGIE COATES.

Subscribed and sworn to before me this 30th day of May 1944.

[SEAL] KATHRYN B. HARRELL,
Notary Public, D. C.

My commission expires March 1, 1947.

63–64 Before the National Labor Relations Board
Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

ROOM 247, FEDERAL BUILDING,
INDIANAPOLIS, INDIANA,
Friday, September 24, 1943.

The above-entitled matter came on for hearing, pursuant to notice, at 1:30 o'clock p. m.

Before THOMAS E. SHROYER, Trial Examiner.

Appearances

Mr. Kurt F. Pantzer, 1313 Merchants Bank Building, Indianapolis, Indiana, and Mr. Lewis D. Spencer, 1313 Merchants Bank Building, Indianapolis, Indiana, for E. C. Atkins and Company.

Mr. F. M. Richardson, 49½ South Delaware Street, Indianapolis, Indiana, and Mr. Walter B. Heisel, Jr., 49½ South Delaware Street, Indianapolis, Indiana, for the International Association of Machinists.

65

PROCEEDINGS

Trial Examiner SHROYER. The hearing will come to order. This is a formal hearing in the matter of the E. C. Atkins and Company and International Association of Machinists, District 90 and their affiliate, Local 1683. This is case number 9–R–1200. The Trial

Examiner appearing for the National Labor Relations Board is Thomas E. Shroyer. Counsel will please state all appearances for the record.

Mr. RICHARDSON. F. M. Richardson, 49½ South Delaware Street, Indianapolis, Indiana, and Walter B. Heisel, Jr., 49½ South Delaware Street, Indianapolis, Indiana, for the International Association of Machinists.

Mr. PANTZER. Kurt F. Pantzer and Lewis D. Spencer, 1313 Merchants Bank Building, Indianapolis, Indiana, for the employer the E. C. Atkins Company.

Trial Examiner SHROYER. I wish to inform all parties that the official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record directed to the Board must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any other litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction
66 will submit the suggested correction to the other party or parties in writing. When this has received the written approval of the other parties it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made in the transcript. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a stipulation concerning such matters after the close of the hearing, stipulations or motions with respect to corrections in the transcript or record should be directed to the Board in Washington inasmuch as the Trial Examiner's connection with the case ceases upon the closing of the record at the end of the hearing.

This is a formal hearing and I request that you maintain the decorum that accompanies judicial proceedings.

There will be no smoking in the court room at any time.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. "Off the record" discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed
67 to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings during the course of the hearing and upon

appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

At this time I am marking as Board's Exhibit 1-A for identification the original Notice of Hearing in this case signed by Rosemary S. Macke on September 16, 1943, to which is attached an original petition signed by F. M. Richardson on September 10, 1943. I am marking as Board's Exhibit 1-B for identification a copy of Trial Examiner's Statement in "R" Cases. I am marking as Board's Exhibit 1-C for identification an Affidavit of Service to which are attached Return Receipts.

Mr. PANTZER. The subject of the motion I am going to make on affidavits submitted will show no objection to the exhibits, Mr. Examiner.

Mr. RICHARDSON. There is no objection.

Trial Examiner SHROYER. There being no objection the same are received in evidence.

(Whereupon, the documents heretofore marked for identification as "Board's Exhibits 1-A to 1-C," inclusive were received in evidence.)

68 Trial Examiner SHROYER. Inasmuch as the Notice of Hearing says that this case will come on at 10:00 o'clock, at this time I would like to mark for identification as Board's Exhibit 2 Telegram directed to both the Company and the attorney for the company, Mr. Pantzer, and the Union, notifying all parties of the hearing in that it had been postponed until 1:30 today. I now offer Board's Exhibit 2 in evidence. Is there any objection?

Mr. PANTZER. No objection. We received a copy of such telegram.

Trial Examiner SHROYER. You also did, Mr. Richardson?

Mr. RICHARDSON. Yes, sir.

Trial Examiner SHROYER. There being no objection, it is admitted in evidence.

(Whereupon, the document heretofore marked for identification as "Board's Exhibit 2" was received in evidence.)

Trial Examiner SHROYER. May I ask if there are present at the hearing any other interested unions or parties? Let the record show that no one answered the Examiner's question. I believe you stated you had a motion to make, Mr. Pantzer?

Mr. PANTZER. I have. I wish to say that my motion at this time would be premature, and so I shall renew it at the close of

all the evidence. The employer, E. C. Atkins and Company,
69 moves to dismiss the petition for investigation, which is included in Board's Exhibit 1, for the reason that E. C. Atkins and Company is not and cannot be an employer within the meaning of Section 2, Subsection 2 of the National Labor Relations Act with respect to Auxiliary Military Police who wholly constitute the bargaining unit set forth in Item 4 of the Petition for Investigation, and further, for the reason that the employees referred to in such Petition cannot come within the definition of the word "employees" under the provisions of Section 2, Subsection 3 of the National Labor Relations Act with respect to the alleged employer, E. C. Atkins and Company, they are not in the sense in which the word "employee" is used in the Statute, the relationship of employer and employee with their various interests never having set in and not at this time existing.

Trial Examiner SHROYER. At this time the testimony will refer to motion to dismiss and go to the Board for ruling. You may renew your motion at the close of the hearing if you desire.

Mr. PANTZER. For the purpose of the record then, if you are going to refer it to the Board, so that there will be no failure on my part through oversight, I wish the motion to be renewed.

Trial Examiner SHROYER. It may be so considered.

Mr. PANTZER. Does that have your permission?

70 Mr. RICHARDSON. Yes, sir.

Mr. PANTZER. Thank you.

Trial Examiner SHROYER. With regard to the Interstate Commerce data handed to the Examiner, will you now read that into the record, Mr. Pantzer?

Mr. PANTZER. "E. C. Atkins and Company (hereinafter referred to as the "Employer") is a corporation organized and existing under the laws of the State of Indiana, with two plants in Indianapolis, Indiana. The main plant in Indianapolis, which occupies two entire city blocks and is bounded on the north by South Street, on the west by Capitol Avenue, and on the east by Illinois Street, and on the south by Merrill Street, has been in operation since 1857. The Federal Government owns the new armor plate plant employed by the Employer in war production at the southeast corner of 21st Street and Northwestern Avenue.

"The Employer is engaged in the business of manufacturing and selling saws; tools and armor plate (hereinafter referred to as the "Business of the Company").

"The facts bearing upon the question of whether the Employer is engaged in interstate commerce, and whether a question of representation affecting commerce arises, in this cause, are as follows:

"1. The principal raw materials used in the Business
71 of the Employer are steel, castings, and lumber (hereinafter referred to as the "Raw Materials").

"2. Approximately eighty per cent (80%) of the Raw Materials used in the Business of the Employer is purchased and shipped in interstate commerce from sources outside the State of Indiana.

"3. Approximately eighty per cent (80%) of the finished products produced by the Employer is sold in interstate commerce to purchasers outside the State of Indiana.

"4. During the calendar year 1942, the Raw Materials used in manufacturing the finished product of the Employer was in excess of $500,000.00.

"5. During the calendar year 1942, the gross sales price of the finished product sold by the Employer was in excess of $1,000,000.00.

"6. The Employer ships its finished products by rail and truck.

"7. The finished product of the Employer is disposed of to the United States Government, jobbers, dealers, subcontractors, and direct to manufacturing consumers.

"8. The Employer advertises through industrial magazines and periodicals.

72 "9. During the Calendar year 1943 to the date of this hearing, the manufacturing and selling operations of the Employer have continued substantially along the same lines as those related, concerning the year 1942, in the preceding sections hereof.

E. C. ATKINS AND COMPANY."

Trial Examiner SHROYER. Mr. Richardson, do you accept the statement?

Mr. RICHARDSON. I do, yes, sir.

Trial Examiner SHROYER. It may be so accepted. Thank you very much, Mr. Pantzer, for a very complete statement. I appreciate it.

Mr. PANTZER. We are also willing to make the admission that we are engaged in interstate commerce within the meaning of the jurisdictional provisions of the National Labor Relations Act.

Trial Examiner SHROYER. Thank you, very much. Mr. Pantzer, will you stipulate that International Association of Machinists, District 90 and their affiliate, Local 1683, is a labor organization, at least within the meaning of Section 2, Subsection 5, National Labor Relations Act?

Mr. PANTZER. Naturally, because of the motion I made at the beginning of the case, I should prefer not to enter into that stipulation but to hear the evidence on it, and if I might at this moment depart from the usual order of procedure in these hearings,
73 I should like to submit to you an application for subpoena duces tecum directed at F. M. Richardson to produce union records, which I have marked for identification as "Employer's

Exhibit No. 1," the original of which I hand to you, and a copy of which I hand to Mr. Richardson for his information.

Trial Examiner SHROYER. I notice, Mr. Pantzer, you marked this Employer's Exhibit No. 1.

Mr. PANTZER. For identification.

Trial Examiner SHROYER. Is there any objection?

Mr. RICHARDSON. No objection.

Trial Examiner SHROYER. There being no objection, Employer's Exhibit No. 1 is admitted.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 1" was received in evidence.)

Trial Examiner SHROYER. Now, with reference to the application for subpoena duces tecum directed at Mr. Richardson, the testimony will correct the application insofar as Number one is concerned, for the charter, constitution, and bylaws of the union. I wish, however, Mr. Pantzer, before I rule the second part, if you will state for the record just how the things requested under Number 2 would go to show whether or not this was a labor organization within the meaning of Section 2, Subsection 5½. Do you wish to comment further than the motion and the paper
74 itself?

Mr. PANTZER. It is the contention of the Employer that the word "Employee" as used in the Wagner Act has the common-law definition of "Employee" and that the word "Employer" has the common-law definition of "Employer," except to the extent that the Wagner Act may expressly have changed the meaning at common law. That position has been supported by a number of decisions of the Supreme Court, notably the decision of Chief Justice Hughes in the VonSteigl case. When I stated that the incidence of the relationship of employer and employee at common law remained the same under the Wagner Act except to the extent that those incidents might have been changed. One of those incidents which had been changed was, as the Examiner said, the right to discharge an employee for striking. He said, "The right so to discharge had existed at common law and unless it was affected by the language of the Act, continued." He pointed out that the language of the Act had changed. That incident had abrogated the right to discharge for striking, but that it had not abrogated any of the other incidents of discipline, of power over the employees that the employer had at common law. With that preface now, I turn to the question of the Examiner. It is the contention of the Employer that the search of the documents referred to in Item 2 of the Application for subpoena duces
75 tecum will *will* throw a light upon the major thesis of the Employer; namely: that the relationship of the employer and employee cannot exist in the case of an employer subject to

Federal supervision by the Military and an employee actually enrolled in and sworn into the Military. Many of the incidents of the relationship between employer and employee at common law are not abrogated and do not and cannot exist under such circumstances.

Now, for instance, the minute book of the union may well throw light upon the manner in which the union proposes to proceed. If the purposes of organizing this particular union are sufficiently definite, we may even establish by the facts adduced from that book that the union is attempting to organize employees of the United States, which is expressly prohibited by the Wagner Act.

Certainly those documents will help to throw light upon the relations which exist in this particular case—constrained, restricted, cramped, straight-jacketed as it is by Military supervision. I cannot say to you definitely what particular fact I shall find in those books. They have not been made available to me, but it is the same kind of information which the Labor Board is accustomed to experience from employers—lists of employees, minute books, correspondence, corporate records, pay rolls, treasury data, matters of that sort.

76 Trial Examiner SHROYER. At this time the Examiner will acknowledge your request for subpoena duces tecum as to the items mentioned in Number 2 of your request. With reference to the charter or constitution and bylaws, do you have those available, Mr. Richardson?

Mr. RICHARDSON. Yes.

Trial Examiner SHROYER. Do you have them with you?

Mr. RICHARDSON. No, sir. I didn't carry a charter 3 x 4 feet.

Trial Examiner SHROYER. I suggest we take a five-minute recess and have them brought to the courtroom.

Mr. RICHARDSON. Do you want that charter brought here?

Trial Examiner SHROYER. Yes. I have no doubt, Mr. Pantzer, you will be satisfied with a copy of the charter?

Mr. PANTZER. I should like to have a photostat of the thing made or a typewritten copy and have that put in evidence rather than deface the charter, which naturally you want to keep in as nice condition as possible.

Mr. RICHARDSON. We have no photostatic copy. We have the charter, the constitution, and the bylaws.

Trial Examiner SHROYER. May I suggest we take a five-minute recess while you go and telephone your office girl and have her make a typewritten copy of what is on the face of the charter and bring both the charter and the copy to the hearing. We will take a five-minute recess.

77 (Whereupon a five-minute recess was taken.)

Trial Examiner SHROYER. Mr. Richardson informs me that he has made arrangements to have the constitution and by-laws brought in. We might skip that point for the moment and proceed.

With regard to how the question arose, Mr. Richardson, was any request for recognition of bargaining rights made?

Mr. RICHARDSON. Yes, sir, there was. There was a request. The union wrote a letter to the company asking for recognition. The letter was never answered.

Trial Examiner SHROYER. You have a copy of that letter?

Mr. RICHARDSON. Yes, sir.

Trial Examiner SHROYER. I will mark this Board's Exhibit 3 for identification. Is there any objection?

Mr. PANTZER. There is no objection to that and the Employer admits that the original of that letter was received in due course of mail.

Trial Examiner SHROYER. Thank you. It may be admitted as Board's Exhibit 3.

(Whereupon, the document above referred to was marked for identification as "Board's Exhibit 3" and received in evidence.)

Trial Examiner SHROYER. Well, Mr. Richardson, following the writing of this letter on August 18, did you receive any reply from the Company?

78 Mr. RICHARDSON. No, sir. We received no reply from the Company until we were called before the Board. We were before the Board then and filed a petition for election, and the union and the company met before the Board and the certification we have here was made out.

Trial Examiner SHROYER. I take it, Mr. Pantzer, that the Company still declines to recognize and bargain with the union?

Mr. PANTZER. That is correct.

Trial Examiner SHROYER. At this time, I am marking Board's Exhibit 4 for identification, which is a statement of field examiner concerning claims of authorization for the purpose of representation.

Mr. PANTZER. May the record show that it is not because of anything personal with Mr. Richardson and his associates that that position is taken, but for the reasons already indicated by the Employer's motions and statements heretofore.

Trial Examiner SHROYER. I will now hand Board's Exhibit 4, which I have marked, to the parties for examination.

Mr. PANTZER. The Employer objects to the introduction of Board's Exhibit 4 for the reason that it purports to introduce into the record so that the information is not available, or subject, to examination or cross-examination by the Employer. Information

from membership cards, the application for subpoena to
79 adduce which has been denied by the Trial Examiner. The Employer further objects to the introduction of Board's Exhibit 4 because the information therein contained is pure hearsay and further because the information therein contained is not the best evidence, being that the best evidence would be the membership cards themselves.

Trial Examiner SHROYER. With reference to the objection to the admission of Board's Exhibit 4, I would like to say, as the Board said in a recent case, being case No. R-5787, that "Authorization or membership cards are required not as proof of the precise number of employees who desire to be listed, by labor organization, or as a basis for determining the appropriate representative, but simply to provide a reasonable safeguard against the indiscriminate institution of representation proceedings by labor organizations, which might have little or no membership in the unit claimed appropriate."

This statement is adequately provided for by statement of the Regional Director made on the basis of the pay-roll check in which signatures on cards are not compared with the actual signatures of employees, but with the names.

Trial Examiner SHROYER. I overrule the objection and admit Board's Exhibit 4 in evidence. Mr. Richardson, did you see this?

Mr. RICHARDSON. I did.

80 (Whereupon, the document heretofore marked for identification as "Board's Exhibit 4" was received in evidence.

Trial Examiner SHROYER. Mr. Richardson, in your certification I note that you claim the following unit to be appropriate: All plant guards employed by the Company at its two Indianapolis, Indiana, plant, E. C. Atkins and Company; and Fall Creek Ordnance Plant, excluding sergeants, lieutenants, captains, and chief. I take it you still contend that is not an appropriate union?

Mr. RICHARDSON. Yes, sir.

Trial Examiner SHROYER. Do you have any witness to introduce?

Mr. RICHARDSON. Yes, sir; Mr. Gann.

Trial Examiner SHROYER. Off the record.

(Off the record.)

Trial Examiner SHROYER. On the record.

WALTER C. GANN, called as a witness by and on behalf of International Association of Machinists, a union, being first duly sworn, was examined and testified as follows:

Trial Examiner SHROYER. Give your name and address to the reporter.

The WITNESS. Walter C. Gann, 331 South Wolcott Street, Indianapolis.

81 Direct examination by Mr. RICHARDSON:

Q. Where are you employed, Mr. Gann?

A. At E. C. Atkins and Company, 402 South Illinois Street.

Q. How long?

A. Since January 21, 1943.

Q. What is your position?

A. My position is as guard member of the Auxiliary Military Police.

Q. Are you acquainted with all the duties of guards?

A. I am.

Q. Do they all wear uniforms?

A. Yes, sir.

Q. They all carry guns?

A. Yes, sir.

Q. Have they been sworn in as Auxiliary Military Police?

A. Yes; I think they all have unless there be one or two new ones that haven't.

Q. That is the general procedure?

A. That is the general procedure—sworn in as soon as possible.

Q. What, in general, do guards do?

A. In general, they guard the plant, supposed to obey all the general orders and specific orders which the Company asks us to obey.

82 Q. Let me ask you a question here; if this is about guards' duties, do you watch the gates or entrances to the plants, and the exits? Do you maintain order, escort visitors, direct traffic, make out passes? Do guards make out passes?

A. No; the guards do not make out passes.

Q. Watch for suspicious circumstances around the plant?

A. That is right.

Q. And fire? You look out for fires—duties and things like that?

A. That's right.

Q. Now carry cash to the different places in the plant?

A. On certain posts we do. Not at all posts.

Q. That, in general, is about what constitutes the duties of the guard, isn't it?

A. That's right.

Q. Now, with regard to workers, do you observe the production workers? Do you observe them at their posts? Do guards go through the plant and watch production workers and what they are doing?

A. At times we do.

Q. If you see a production worker doing something wrong, what you thought was wrong, what do you do?

A. I would see my lieutenant and tell him and he probably would take it up with our chief or maybe, if the chief can't be located, he would see his foreman about it.

Q. In other words, if you saw a production worker doing something you thought was wrong or out of line or might
83 be sabotage, you would not correct that production worker. You immediately report to your superior?

A. Well, that depends. If he is doing something drastically wrong, right there, of course I would take it upon myself to protect the plant, but if it was a minor thing, of course, for instance, he got, oh, got a little bit up in the air about showing his pass, then I would; sometimes, not often, a fellow will really get up in the air about your asking him to show his lunch kit or open a package, well, I would report anything like that to the lieutenant and he would take it up with the proper one.

Q. Do you, when you are hired and go to work there, are you told to take any disciplinary action over anybody in the plant? Do you have any right to arrest anybody in the plant without first calling your superior?

A. Yes, we do.

Q. However, the main thing you do is report it to your immediate superior; is that right?

A. That's right.

Q. If you see things out of line?

A. Yes; regardless whether the arrest is made or not. It is reported to our superior.

Q. Immediately?

A. As soon as possible.

Q. Who hires the guard?

84 A. The personnel manager and the chief.

Trial Examiner SHROYER. What personnel manager?

The WITNESS. Our personnel manager.

By Mr. RICHARDSON:

Q. Of the Atkins company?

A. Of E. C. Atkins and Company.

Q. Who pays him?

A. E. C. Atkins and Company, as far as I know.

Q. Are you paid in checks?

A. Paid in checks.

Q. Signed by E. C. Atkins and Company?

A. That is right.

Q. Who has the authority to discharge you?

A. The personnel manager or the chief, I would think, of E. C. Atkins and Company.

Q. Who sets your rate of pay?

A. E. C. Atkins and Company.

Mr. RICHARDSON. I think that is about all I wish to ask.

Trial Examiner SHROYER. Any questions?

Mr. PANTZER. Yes.

Cross-examination by Mr. PANTZER:

Q. Gann or Jann?

A. Gann, G-a-n-n. Yes, sir.

Q. Mr. Gann, you stated you were employed January 21, 1943?

A. That's right.

85 Q. Mr. Gann, at that time you executed an application for membership, is that right?

A. That's right.

Q. And that application was on a printed form which was available at the personnel office of E. C. Atkins and Company?

A. Yes, sir.

Q. How soon after that application was signed were you assigned to military duty as an Auxiliary Military Police at the Atkins Company plant?

A. The following day I went to work on the Auxiliary Police.

Q. You had never worked at the Atkins Company place before that assignment?

A. No, sir.

Q. State whether or not it's the custom either before or shortly after the assignment of a new Military Policeman to duty to have him sign a contract with the United States Government, take the oath to defend the Constitution, and be sworn in by an officer of the United States Army?

A. That's right. I have that in my billfold right now.

Q. May I look at that, please?

A. Here is the card.

Q. Have you an identification card?

A. Here it is.

Q. When you were enrolled at the Atkins plant then you signed this document which you have just produced from

86 your wallet an unsigned copy of which, with all blanks vacant, marked Employer's Exhibit No. 2, I show to you. That is marked for identification.

A. That's right. It's identical.

Q. It's identical? And the blanks are filled in as follows: Are they not, Mr. Gann? The top blank has your name, Walter C. Gann? The next blank being the one in the second paragraph, has again your name, Walter C. Gann—the first one in the second paragraph? The second blank, E. C. Atkins and Company, and

the third blank, 402 South Illinois Street, and then the contract is signed at the right, Walter C. Gann, and at the left, High A. Johnston, Chief of Guards, January 27, 1943?

A. That's right.

Mr. Pantzer. The Employer now offers in evidence Employer's Exhibit 2, giving a copy thereof to Mr. Richardson for his file.

Trial Examiner Shroyer. Is there any objection, Mr. Richardson?

Mr. Richardson. No.

Trial Examiner Shroyer. Admit it as Employer's Exhibit No. 2.

(Whereupon the document heretofore marked for identification as "Employer's Exhibit No. 2" was received in evidence.)

87 By Mr. Pantzer:

Q. You have produced from your wallet the identification card of which you spoke, entitled Plant Guard Identification Card, signed by B. R. Wetenhall, Captain Corps Military Police, District Plant Guard Officer, Continuous Security District Office, Cincinnati, Ohio, is that right?

A. Yes, sir.

Q. Now I ask you, in order that you don't have to put your card in evidence, and in that way not get it back, whether in all substantial particulars excepting the name, the date, and so forth, it is similar to the plant guard identification card which I show you in photostatic form of Henry A. Johnston, and which I have designated as Employer's Exhibit No. 3?

A. Yes, sir.

Q. And this has been blown up and the blank put across it in white so as not to violate the regulations against counterfeiting such cards. Mr. Gann, that is the only reason it is blown up.

A. Surely, and that is identical with the guard picture which I have.

Q. I now offer Employer's Exhibit No. 3 in evidence and hand the copy to Mr. Richardson.

Trial Examiner Shroyer. Is there any objection, Mr. Richardson?

88 Mr. Richardson. No.

Trial Examiner Shroyer. If there is no objection, it is admitted as Employer's Exhibit No. 3.

(Whereupon, the documents heretofore marked for identification as "Employer's Exhibit No. 3" was received in evidence.)

By Mr. Pantzer:

Q. Mr. Gann, in addition to signing the contract with the United States Government, which is Employer's Exhibit No. 2, you also were sworn in, is that right?

A. That's right.

Q. And in addition to that contract you took a verbal oath of office to support the Constitution of the United States in substance and the Military authorities?

A. Yes, sir.

Q. That oath was almost identical with certain of the language in the contract, is that not so?

A. That's right.

Q. Or do you recall?

A. Yes; that's right.

* * *

89 Q. By the general orders you mean they are issued by the Government itself?

A. That's right.

Q. And as between a Government order and a Company order, which do you consider as having priority?

A. Well——

Q. The Military?

A. I would say one would be just as important as the other. The general orders deals with our particular—deals with the guard at general, while special orders would deal with some particular post and I would say one was just as important as the other.

Q. Well, these special orders then relate to your military duties?

A. That's right.

Q. By whom are they issued?

A. They are issued by the company commander.

Q. Who is the company commander?

A. Mr. Wetenhall, of course, of the Government. I mean now the Government issues the general orders, but I mean we get all of the dope, procedure, from Mr. Wetenhall pertaining to the Auxiliary Military Police. The general orders originate from the Company.

Q. How do you spell that name?

A. Wetenhall, W-e-t-e-n-h-a-l-l.

90 Trial Examiner SHROYER. The same man who signed the card which he has in his possession and also Employer's Exhibit No. 3?

The WITNESS. Yes.

Trial Examiner SHROYER. Thank you.

By Mr. PANTZER:

Q. It is not Mr., but captain, is it not?

A. That's right.

Q. And when you said "company orders" you did not mean the E. C. Atkins company, but the military company to which you belong? They are the lieutenants, the assistant chief, the chief, and then Lt. Scanlon and Capt. Wetenhall?

A. Well, that's true.

Q. Special orders come from that company?

A. What I meant was they are different from the general orders in this way, that they apply to a particular post while the general orders are for the whole guard in general.

Q. So that your obligations to carry out specific tasks are directed by Capt. Wetenhall, Lt. Scanlon, Chief Johnston, the four lieutenants under Chief Johnston, and the military regime that you are working with?

A. That's right.

Q. Do I understand that you swore to observe and obey the Articles of War?

A. That's right.

91 Q. Do I understand that you swore to observe and obey the Articles and these Articles are read to you and that you are required to study them?

A. Yes.

Q. Where does that course of instruction take place?

A. We have military school each Monday for a period.

Q. Where is that situated? At the plant?

A. At the Ipalco Club Building. Indianapolis Power and Light Building. Each Monday for a period of one hour.

Q. Located near the plant?

A. No; not near the plant.

Q. Under Military supervision?

A. That is true.

Q. Who conducts the classes and instruction there?

A. An army lieutenant.

Q. Lt. Scanlon?

A. Lt. Scanlon.

Q. And he is a regular lieutenant?

A. That is right.

Q. He worked his way up through the ranks?

A. I imagine he did unless he got a commission.

Q. You don't know then?

A. No.

Q. When you undertake to arrest anyone while you are on your post, you do it by virtue of the authority of the

92 Military authorities, is that not right?

A. That's right.

Q. Have you ever studied the Manual of Interior Guard Duty?

A. Yes, sir; when I first went to work at the plant, I studied the Interior Guard Book.

Q. You were familiar with the fact that your general orders are to take charge of this post and all plant and Government property?

A. That's right.

Q. "To walk my post in a military manner keeping always on the alert and observing everything that takes place within sight or hearing"?

A. Yes.

Q. "To report all violations of orders I am instructed to enforce"?

A. Yes, sir.

Q. Who instructs you to enforce those orders?

A. The Government.

Q. The Military? The Military Government?

A. Military Government.

Q. Military Police?

A. That's right.

Q. Those instructions never come from Mr. Wood, who is here in the court room, or Mr. Atkins, or any of the
93 foremen in the Atkins plant? Your orders come from the Military alone, is that not so?

A. Mainly so, I would say. Of course, they might have a special order which they would expect us to carry out. That might not necessarily be military but it would be mainly. Our orders would be mainly from the military source, of course.

Q. To whom do you report the violation, to Mr. Wood?

A. No; we report the violations to either the lieutenant or the Chief, if he happens to be there.

Q. The Chief, Chief Johnston?

A. Yes, sir.

Q. At which plant do you work?

A. 402 South Illinois Street.

Q. At the main plant, the old plant?

A. Yes, sir.

Q. Who was the person in the personnel office who as you said, hired you on January 21, 1943?

A. Well——

Q. Do you know his name?

A. I first appeared at Mr. Wood's office and then was sent down to the Transportation Office to Mr. Andrews, and Mr. Andrews is the one that hired me.

Q. Do you know personally whether or not Mr. Andrews hired you without first consulting the Military Police?

94 A. No; I do not know.

Q. Did you, or do you ever get any of these directives for your information that are handed out by Lt. Col. A. C. Rasmussen, who is the District Chief of the Continuous Security District Office at Cincinnati?

A. I haven't received one, I don't think.

Q. Did they have those posted down at 16th and Alabama Street at the Elpaco Office?

A. I haven't seen any posted. However, we do have a set of guard rules, a long poster of guard rules put up in those places in the plant pertaining to the Auxiliary Military Police, but I haven't seen a document like that.

Q. I now show you a document which is dated June 7, 1943, relating to the subject, The Auxiliary Military Police, and ask you to read paragraph No. 25, the first sentence. Is that the testimony you were at?

A. "A member of the Auxiliary Military Police may not be employed, dismissed, or may not resign, if the plant guard officer or other responsible army representative believes that the efficiency of this plant guard force would be impaired and declines to give his approval thereto."

Q. In other words, your employment on January 21 did not become effective until the Military Police had given their approval to that employment, is that not so?

A. Well, my employment started January 21, although I
95 wasn't inducted until August. My employment started on January 21, but I was not inducted until January 27, but my salary started from the date I was employed.

Q. That's right, as I understand it. But you were sworn in, I believe, on the 27th of January, is that the date on your card?

A. Yes, sir.

Q. From the 21st of January to the 27th of January you were an employee of E. C. Atkins and Company?

A. Yes, sir.

Q. They pay you whether you are their employee or whether you are a military policeman, but from January 27 you became a military policeman and were no longer an employee of E. C. Atkins and Company, as you had been up to January 27? Your status changed, did it not?

A. That's right. I wasn't a member of the Auxiliary Military Police until I was inducted January 27.

Mr. PANZER. In order that the Trial Examiner and Mr. Richards may both follow the thought of this examination, I beg to offer in evidence Employer's Exhibit No. 4, which is the directive from which I have just cross examined Mr. Gann and which has the paragraph that I referred to, Paragraph No. 25, in it. Mr. Richardson may want to do some redirect examination later on and I want to make the document available.

96 Trial Examiner SHROYER. Are there any objections?

Mr. RICHARDSON. No.

Trial Examiner SHROYER. There are no objections so it will be admitted as Employer's Exhibit No. 4.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 4" was received in evidence.)

By Mr. PANTZER:

Q. Are you a member of the local union that is petitioning here?

A. I am.

Q. How long have you been a member?

A. Since August, this year.

Q. Are you an officer of the local?

A. I was elected to the negotiating committee.

Q. Have the local at this time elected a president, vice president, secretary, treasurer, and so forth?

A. No, sir.

Q. Where were you elected a member of the negotiating committee?

A. At 491½ South Delaware.

Q. Do you have available the minutes of that meeting?

A. I do not.

Q. Do you know whether or not minutes were taken?

A. No; I don't know.

Q. Do you know?

97 A. I wasn't present at the meeting and I don't know.

Q. You weren't present?

A. I wasn't present.

Q. Do you know whether or not the statement has been made in the organizational activities of the local union that their desires to force the closed shop were true if it is recognized as a bargaining agent?

A. No; I do not. I wouldn't say that I do.

Q. Have you been at any of the meetings of the membership?

A. Yes, sir; I have.

Q. You do not know whether that point was discussed?

A. I don't believe that it has been. I don't think it has been discussed up until now.

Mr. PANTZER. That's all. Thank you.

Trial Examiner SHROYER. Any further question?

Mr. RICHARDSON. Just a minute.

Redirect examination by Mr. RICHARDSON:

Q. When you were taken in as a member of Local 1683, you do know and realize that the local has been established for over a year, and that there are members of that local?

A. Yes, sir.

Q. That's all.

Re-cross examination by Mr. PANTZER:

98 Q. Is this a local that represents employees of more than just the Atkins plant?

A. Yes, sir.

Q. What are the other plants represented?

A. Well, I know the Curtiss-Wright.

Q. The Curtiss-Wright Corporation, Propeller Division Plant in Indianapolis.

A. The Morris and Kentucky Avenue plant, isn't it?

Q. The old Marmon plant.

A. Yes.

Q. Are they all in the same local that's trying to organize the Atkins company?

A. That's correct.

Q. What other plants are represented in the membership of that local?

A. Marmon-Harrington Company, Merz Engineering, Indianapolis Tool and Die Company. The Marmon-Harrington Company manufactures tanks.

Q. For the armed forces, does it not?

A. I believe so.

Q. It is a pioneer in tank manufacture under the leadership of Col. Harrington.

A. That's right.

Q. The Tool and Die Company has no direct war contracts, has it?

Mr. RICHARDSON. He is mistaken. It is not the Tool
99 and Die Company. It is the International Machine Tool Company, rather than the Indianapolis Tool and Die.

WITNESS. That was a mistake on my part.

By Mr. PANTZER:

Q. If this union organizes the Atkins company it will not be a separate local covering just so-called Atkins' employees, but employees of these other plants you have mentioned and perhaps other plants in addition thereto?

A. Well, I am not sure about that. I know only the guards of our plant and the guards of Kall Creek Ordnance are going to be the only guards under the one contract if it is recognized. I know that. But whether the guards of all plants are under the same charter, I do not know.

Mr. PANTZER. That's all.

Trial Examiner SHROYER. Just one or two questions.

EXAMINATION BY TRIAL EXAMINER

By Trial Examiner SHROYER:

Q. As I understand it, you have a captain of the guards, one captain?

A. We have a chief of guards.

Mr. PANTZER. Chief is the title.

By Trial Examiner SHROYER:

Q. Is there also a captain in addition?

A. No; we have a chief and four lieutenants.

Q. You have one chief and four lieutenants at the main plant?

100 A. That's right. I am at the 402 South Illinois. I don't know about the Fall Creek Ordnance.

Q. Are there any other people in the guard set up that you recognize as being in any sense your supervisor?

A. Yes, sir.

Q. Who else?

A. Maybe I didn't understand you right?

Q. You told me you have a chief and four lieutenants. My question is, is there anyone else in this guard set-up which you recognize as being your supervisor?

A. Yes, sir.

Q. Who else?

A. I see Mr. Woods and Mr. Atkins.

Q. I meant within the guard group.

A. No.

Q. Do they have any sergeants?

A. We do not have sergeants or corporals at the plant.

Q. I notice in an answer of one of Mr. Pantzer's questions, you said the company may have special orders that they wish to perform. Have you ever been directed to carry on any special orders?

A. Yes; at one post in particular, where the trucks come in and of course they go out at another gate, unless it is a necessity that they go out that same gate. We have a special order per-

101 taining to those trucks, once in a while a special order.

Q. What kind of an order would you have as an example?

A. Well now, we have certain truck companies that get in on a little different procedure from what other companies do and we may receive special order through that one particular company; see? Or I mean we may receive a special order pertaining to that one company.

Q. Who gives the special order?

A. From the chief.

Q. That is all.

Trial Examiner SHROYER. Are there any further questions?

Mr. PANTZER. Yes.

Recross examination by Mr. PANTZER:

Q. Yes; you said in answer to a question by the Trial Examiner that Mr. Woods and Mr. Atkins were your supervisors. As a matter of fact, they are not your supervisors?

A. I didn't mean—I didn't understand what he said.

Q. I thought your answer was wrong.

A. You meant of the guards? I didn't understand that. I meant over the guard.

Q. Is it not true that the person superior to Chief Johnston is in the Military Police structure, or do you actually know?

102 A. Oh, yes; I am absolutely sure.

Q. The captain we referred to there is Capt. Wetenhall, who signs all major orders down in Cincinnati?

A. That is right.

Q. He comes up and inspects at least once a month or once every two weeks; is that right?

A. I havn't ever been present when he came in. He goes in at the main office.

Q. You heard that he has been around?

A. Yes.

Q. Lt. Scanlon is under him?

A. That's true.

Q. And under him come the two chiefs, Chief Johnston at your plant and Chief Hann at the Fall Creek Ordnance plant?

A. That's right.

Mr. PANTZER. That's all.

Redirect examination by Mr. RICHARDSON:

Q. When you joined this local 1683 you understood that, and you do know that only members in that local and that there is nobody in that local or, nobody covered by that local except plant protection guards?

A. That's right.

Mr. RICHARDSON. That's all.

Trial Examiner SHROYER. That is all. Thank you very much.

103 Trial Examiner SHROYER. Do you have any further witnesses now, Mr. Richardson?

Mr. RICHARDSON. No; I haven't.

Trial Examiner SHROYER. Did you get the information you desired?

We will go off the record.

(Off the record.)

Trial Examiner SHROYER. On the record. Mr. Richardson, you have secured the constitution and bylaws, and I think it might be a good idea for you to be sworn at this time and introduce them in evidence.

FRANK M. RICHARDSON, called as a witness by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

Direct examination by Trial Examiner SHROYER:

Q. Mr. Richardson, because you have informed us you have no counsel present, I will understand that you have the right to object to any questions that I might ask you, or that Mr. Pantzer might ask you. Will you give your full name to the reporter, please?

A. Frank M. Richardson.

Q. Where do you live?

A. 126 South Illinois.

Q. What is your business or occupation?

104 A. Business representative, International Association of Machinists.

Q. How long have you been a business agent for the Machinists?

A. Five years.

Q. Where are your headquarters?

A. 491½ South Delaware Street.

Q. You were directed by the Trial Examiner to produce a copy of your constitution and bylaws. Have you one with you now?

A. Yes, sir.

Q. Will you hand it to me, please? I now mark this for identification as "Petitioner's Exhibit No. 1." Petitioner's Exhibit No. 1 is a copy of your constitution; is that correct?

A. That's right; Grand Lodge constitution and bylaws for the Grand Lodge, and local lodges, too.

Q. When was this constitution adopted?

A. This last one was adopted December—no, adopted December 1940 and amended April '41 and became effective April 1, 1942.

Q. Where do you receive copies of this constitution and bylaws?

A. Grand Lodge, Washington, D. C.

Trial Examiner SHROYER. Is there any objection, Mr. Pantzer, to the introduction of Petitioner's Exhibit No. 1?

105 Mr. PANTZER. I think it is highly proper.

Trial Examiner SHROYER. If there is no objection, it is admitted as Petitioner's Exhibit No. 1.

(Whereupon, the document heretofore marked for identification as "Petitioner's Exhibit No. 1" was received in evidence.)

By Trial Examiner SHROYER:

Q. You were also requested by me to produce your charter.

A. Copy of the charter of Local Lodge 1683.

Q. What you are now handing me is a typewritten paper on one sheet which I will now mark as "Petitioner's Exhibit No. 2" for identification and ask you what it is.

(Whereupon, the document above referred to was marked for identification as "Petitioner's Exhibit No. 2.")

A. It is a copy of the charter for the Local Lodge 1683, Plant Protection Local. The charter.

Q. The charter itself, is that a document in a frame?

A. That's right.

Q. And hangs, I suppose, at union headquarters?

A. It must hang in the meeting place where the local meets.

Q. This paper, Petitioner's Exhibit No. 2, is a copy of what is on that charter?

A. That's right.

106 Q. You have examined this Exhibit 2, have you?

A. Yes, sir.

Q. Can you tell us when this charter was issued?

A. April 1943, second day.

Q. I notice this is Local Lodge No. 1683. You heard the last witness testify to the effect the local admitted to membership employees of concerns other than the Atkins company?

A. That's right.

Q. Did he correctly state the names of the other companies?

A. Yes.

Q. Does Local Lodge No. 1683 have a contract with any of these other companies?

A. Yes.

Q. Will you mention the ones it does have a contract with?

A. It has a contract with everyone we mentioned—Curtiss-Wright, Merz Company, Marmon-Harrington, and International Machine and Tool.

Q. And those are contracts between the Local and the companies covering wages, hours, and working conditions?

A. Yes, sir.

(Whereupon, the document heretofore marked for identification as "Petitioner's Exhibit 2" was received in evidence.)

Trial Examiner SHROYER. You may inquire, Mr. Pantzer.

107 Cross-examination by Mr. PANTZER:

Q. Mr. Witness, I ask you to find for me that portion of the constitution or bylaws of your International Association which qualifies you to organize and represent plant guards?

A. You don't find that in any constitution or no lodge or no other organization. We have been qualified to organize plant guards through our contact with the War Labor Board and been certified as such. The War Labor Board has certified that we are an organization that is entitled to organize plant guards under a plant local.

Q. The only standing which you have as a labor organization, however, arises from the constitution and by-laws which are Board's Exhibit, Petitioner's Exhibit 1?

A. That's right.

Trial Examiner SHROYER: Do I understand the answer to Mr. Pantzer's first question that there is nothing in your constitution or bylaws on the subject of plant guards?

The WITNESS: That's right.

By Mr. PANTZER:

Q. You merely claimed your right, then, as I understand it, Mr. Richardson, to organize the Auxiliary Military Police that are stationed at the Atkins plant by virtue of the general power as a labor union?

A. By authorization of the National War Labor Board. We have been authorized in other plant protection guards to organize by the National War Labor Board, so I see no
108 difference between them and E. C. Atkins and Company.

Q. You mean you have not been authorized by the Labor Board to organize E. C. Atkins and Company as yet?

A. No; not yet.

Q. And consequently, as to the guards stationed at that plant, your only authorization at present is that Petitioner's Exhibit 1? I refer you now to Petitioner's Exhibit No. 2, which is the typewritten copy of the charter, and ask you whether any plant guards stationed at E. C. Atkins Company are charter members on that list?

A. They are not.

Q. Those names on that charter all come from other plants; is that right?

A. That's right.

Q. Do you have a closed shop at Curtiss-Wright Corporation?

A. We do not.

Q. Do you have a closed shop at any of the other plants?

A. We do.

Q. Which ones?

A. All three of the others that I mentioned.

Q. Are you going to attempt to obtain the closed shop at E. C. Atkins Company?

A. I wouldn't want to answer that question.

Q. Will you answer this question, whether or not in your campaign for membership you have told persons that you
109 would have a closed shop?

A. I didn't.

Q. Do you know whether those making solicitation of membership have made such statements?

A. I do not know.

Q. Do you hold any commission under the United States of America or its military authorities?

A. I do not.

Q. Have you had any military experience?

A. Yes, sir.

Q. In the last war?

A. Yes, sir.

Q. Do you hold a commission in the Reserve?

A. I do not.

Q. Have you ever, since the last war which ended in 1918, done any military service?

A. No.

Q. Are you at present connected with a military organization of any kind other than the American Legion or the Veterans of Foreign Wars?

A. I am not.

Q. Are you connected with either of those?

A. Yes, sir.

Q. The Legion?

A. Both of them.

110 Q. Have you ever personally worked as a plant guard?

A. No.

Q. Have you ever personally worked as an Auxilliary Military Policeman?

A. No.

Q. I thank you. That is all.

Trial Examiner SHROYER. That is all. Unless you have something you wish to volunteer?

The WITNESS. No; nothing.

(Witness excused.)

Trial Examiner SHROYER. Mr. Richardson, have you any other witnesses?

Mr. RICHARDSON. Yes, sir.

Trial Examiner SHROYER. Is the Company ready?

Mr. PANTZER. I would like to call Mr. Johnston.

Trial Examiner SHROYER. Mr. Pantzer, there is one point I hope you will be able to bring out. As I understand it, there is more than one plant involved here.

Mr. PANTZER. Yes; I will explain the difference between the relationship of those two plants through Mr. Wood.

HENRY A. JOHNSTON, called as a witness by and on behalf of E. C. Atkins and Company, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. PANTZER:

111 Q. Give your name and address?

A. Henry A. Johnston, RR1, Box 140, Zionsville, Indiana.

Q. You have stated your name and address for the reporter?

A. Yes, sir.

Q. When did you first take a position as an Auxiliary Military Police stationed at the main plant of E. C. Atkins and Company?

A. Well, sir, I went to work there in such capacity in August, last year, and sworn in shortly after by Lt. John Ritchie, of the United States Army.

Q. Had you ever worked at the Atkins company before?

A. No, sir; no.

Q. Did you, when you obtained your employment at the Atkins company, execute an application of employment?

A. Yes, sir; I filled one of those out; yes, sir.

Q. I show you Employer's Exhibit No. 5, being in blank form and ask you whether that is a copy of the application for employment which you then executed?

A. Yes, sir; that's it.

Q. Where was that application executed by you?

A. In the personnel office of E. C. Atkins and Company.

Q. That is the office where it employs regular employees who are in its production and maintenance work, is that right?

A. That's right; yes, sir.

112 Q. Was any representation made to you at the time you were employed that you would be finally accepted and sworn in to the Auxiliary Military Police?

A. No, sir. In fact, I was given to understand that then when I filled the application that it would not be effective without the approval of the United States Government.

Q. State whether or not to your knowledge that statement is made to all who apply for service as Auxiliary Military Police at either of the Atkins plants?

A. Yes, I believe it is; if that is the case, if it is ever overlooked, it is forgotten, but that is the case.

Q. What is your position in the Auxiliary Military Police?

A. I am Chief of the Auxiliary Military Police.

Q. At which plant?

A. South Illinois Street plant.

Q. Main plant?

A. Yes, sir; main plant.

Q. How many lieutenants have you under you?

A. Four.

Q. How many Military Police do the five of you, including your four lieutenants, have under you at the main plant?

A. 32.

Q. Both men and women?

A. No, sir; just men at our plant.

113 Q. But some women are enrolled as Military Police in the ordnance plant?

A. Yes, sir; they are, I believe.

Q. After you signed the application for employment, did you, which is Employer's Exhibit No. 5, you were temporarily assigned to plant patrol work; is that right?

A. Yes, sir.

Q. But were not immediately sworn in?

A. No, sir.

Q. About how soon after you were assigned to work, were you sworn in?

A. It is on the record, could be found out exactly, roughly I would say three weeks.

Q. Do you have with you your plant card, that is, the Plant Guard Identification Card?

A. Yes, sir.

Q. Will you kindly produce it and compare it with Employer's Exhibit No. 3 and state whether or not Employer's Exhibit No. 3 is an accurate and enlarged pho'static copy of the front and reverse of your Plant Guard Identification Card?

A. That's it; yes, sir.

Q. State whether or not you can tell from the Plant Guard Identification Card when you were sworn in to the military service?

114 A. I can't tell from this identification. Yes, that is right [looking at it.] That is the new edition. That is not the one I originally went to work with.

Q. This pass supplants the old one which you had?

A. This pass supplants the old one which I had to turn in to the Federal Government.

Q. This one, Employer's Exhibit No. 3, is a reissue of the original card which you received?

A. Yes, sir. There have been some slight changes, but it is the same basic thing.

Q. Do regular employees in the Production and Maintainance Departments of E. C. Atkins and Company have issued to them Plant Guard Identification Cards?

A. No, sir.

Q. They have issued entirely different identification cards?

A. Yes, sir.

Trial Examiner SHROYER. Mr. Pantzer, did you intend to offer that application of employment?

Mr. PANTZER. The Employer offers Exhibit No. 5 in evidence.

Trial Examiner SHROYER. Is there any objections? It may be admitted as Exhibit No. 5.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 5" was received in evidence.)

115 By Mr. PANTZER:

Q. When you were finally notified that you had been accepted for the Auxiliary Military Police, did you then and only then sign a copy of Employer's Exhibit No. 2 by an agreement between the United States of America and yourself?

A. Well, that exhibit there is signed by the guard, the member of the Auxiliary Military Police. He is not yet a member. He signed that agreement and oath with the United States and that in turn is immediately forwarded to the Continuous Security District Office and then this pass is issued upon receipt after thorough checking has been given. It's issued on that contract. When you receive this pass then you know that you have been accepted by the Government as one of their representatives in the plant.

Q. If you had failed to sign that agreement, it is true, is it not, and I read from Employer's Exhibit No. 4, Item 20: "If a guard refused to sign the agreement, he may, but need not be temporarily retained with the understanding that he will be dismissed as soon as he is replaced and in any event, within a reasonable time."

A. Yes, sir; that's true.

Q. So that if you had not signed the copy of Employer's Exhibit No. 2, which was submitted to you, you would have been dismissed?

A. That's right.

116 Q. You could not have continued to act as an Auxiliary Military Police at the Atkins plant?

A. No; you couldn't.

Q. Upon your having been sworn into the Service, state whether or not there was issued to you a certificate of membership?

A. Yes, sir; there was.

Q. I now show you Employer's Exhibit No. 6 and ask you whether that is a photostatic copy of the certificate of employment which is issued to you?

A. Yes, sir; that's it.

(Whereupon, the document above referred to was marked for identification as "Employer's Exhibit No. 6.)"

Q. It is under that certificate that you hold your authority as an Auxiliary to the Military Police at this time?

A. That's right.

Q. I note that on that certificate the rank has been left blank. What is your rank?

A. I am the Chief, sir.

Q. Is this the commission that was issued to you when you became chief?

A. Yes, sir.

Q. In other words, I note it is dated June 29, 1943, although you originally joined in 1942?

117 A. Yes, sir; that's right.

Q. At that time you were promoted to chief?

A. No, sir; I have been chief all along.

Q. You were hired as chief?

A. Yes.

Q. Do you know whether any investigation of you was made prior to this, to your being appointed chief?

A. I have been told by army officers that there is a careful investigation made of each man and naturally if anything is found on the record proving that he is not the right type of man for that job, he is not allowed to become a member of the Auxiliary Military Police.

Q. That investigation is made by the Military Authorities?

A. Yes, sir; that is my understanding that it is made by the Cincinnati office.

Q. And it isn't made by the personnel office of E. C. Atkins and Company?

A. No, sir; not to my knowledge.

Q. So that your qualifications to serve as an Auxiliary to the Military Police of the Army of the United States are in the first instance examined by the United States Army and not by the personnel office?

A. That's right; yes.

Q. And you know that that is the process because since your appointment as chief you have become thoroughly

118 conversant with the practices in that respect?

A. Yes, sir.

Q. I now show you——

Trial Examiner SHROYER. Did you offer?

Mr. PANTZER. I offer Employer's Exhibit No. 6 in evidence.

Trial Examiner SHROYER. If there is no objection, it is admitted as Employer's Exhibit No. 6.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 6" was received in evidence.)

By Mr. Pantzer:

Q. I now show you Employer's Exhibit No. 7 and ask you what that is a photostatic copy of?

(Whereupon, the document above referred to was marked for identification as "Employer's Exhibit No. 7.")

A. That is an honorable discharge issued by the United States Government, Col. Rasmussen being the representative of the Government. That is an honorable discharge from the Auxiliary Military Police and it relieves a man from duty.

Q. Whenever a man is discharged from the Military Police, who discharges him, the personnel office at E. C. Atkins and Company or the Military?

A. The Military discharges him from the Auxiliary Military Police. Now there is one thing that should be said there.

119 He can be relieved of his duty temporarily by myself or by E. C. Atkins and Company, problematically for breaking some rule or otherwise proving that he is not doing his duty; he could be relieved temporarily but he could not be discharged by E. C. Atkins and Company.

Q. That is true by virtue of Section 25 of the Directive, which is Employer's Exhibit No. 4, which reads: "A member of the Auxiliary Military Police may not be employed, dismissed or may not resign if the plant guard officer or other responsible army representative believes that the efficiency of the plant guard force would be impaired and declines to give his approval thereto." Is that right?

A. That's right.

Q. Are members of the Military Police, Mr. Witness, ever discharged without an honorable discharge?

A. Yes, sir; they are.

Q. In other words, they are discharged for misconduct, absence without leave, drunkenness, for some military reason?

A. Yes, sir.

Q. I now show you Employer's Exhibit 8 and ask you whether that is the form in which such discharge takes place, it being a discharge referring to the termination of Aye Eldridge.

(Whereupon, the document above referred to was marked for identification as "Employer's Exhibit 8.")

120 Mr. Pantzer. I offer them in evidence later.

A. Yes, sir; that would be a dishonorable discharge.

Q. I now show you Employer's Exhibit No. 9, entitled "The Articles of War" and Appendix 1 to a Manual for Courts Martial, U. S. Army, and ask you whether or not that is a publication promulgated by the Military Police?

A. Yes, sir; you take these copies from the army office. That is the Articles of War.

Q. What do you know about the Articles of War?

A. Every soldier, every sailor, every marine, every member of the Auxiliary Military Police, according to the Articles of War, must have read to him within six days of his enlistment—must have read to him the Articles of War and also according to the Articles of War, he must have them read to him every six months thereafter. That is the Articles of War itself, I believe. These are the regulations under which a soldier lives.

Q. Now, how do you receive the general orders for your duties, from what source?

A. General orders are received from Capt. Wetenhall of the Fifth Service Command, Cincinnati.

Q. I now offer in evidence Employer's Exhibits 7, 8, and 9.

Trial Examiner SHROYER. Are there any objections?

Mr. RICHARDSON. No.

121 Trial Examiner SHROYER. There are no objections and they may be admitted in evidence as 7, 8, and 9.

(Whereupon, the documents heretofore marked for identification as "Employer's Exhibits 7, 8, and 9" were received in evidence.)

By Mr. PANTZER:

Q. I now show you Employer's Exhibits No. 10, 11, and 12 and ask you what they are.

(Whereupon, the documents above referred to were marked for identification as "Employer's Exhibits 10, 11, and 12.")

A. These are general orders from Capt. Wetenhall of the Fifth Service Command District Plant Guard Officer, who is over all the Auxiliary Military Police in this District. These three orders take up different subjects and they are to be followed.

Q. Has General Order 4 been published as yet, to your knowledge?

A. Not to my knowledge; no, sir. These are the three general orders under which we are working.

Q. They are the three orders under which you work?

A. Yes, sir.

Q. I ask you whether or not it is customary in order that all may be advised in addition to the chiefs who are in charge of the Military Police to have the various guarding orders photo-
122 stated and blown up like this one I have in my right hand here so that everybody will know exactly what the authorities, duties, and powers of the Military Police are? I read now from Guard Order No. 1, which is a photostatic replica, enlarged four times, of Employer's Exhibit No. 10 and point out to you Article 1. "Pursuant to the orders of the War Department, the guard forces at this plant were activated as Auxiliary Military

Police, and for military purposes will be commanded, drilled, and instructed as military units."

A. That is right.

Q. Item 2, "All members of the guard force are subject to the Articles of War and may be court-martialed or otherwise punished for violations thereof." Is that right?

A. Yes, sir.

Q. And I read Article 4: "The mission of this guard force is to provide protection for this plant. In addition to its normal functions; the force or any member thereof, whether on or off duty, is available for military use in any emergency, whether it be the result of flood, fire, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. *No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission.*" I ask you whether that italicized sentence, the last sentence I read, is one which is emphasized in the training and
123 instruction which is accorded to the Military Police?

A. Yes, sir.

Mr. PANTZER. I now offer Employer's Exhibits No. 10, 11, and 12 in evidence.

Trial Examiner SHROYER. Is there any objection? If not, they may be admitted.

(Whereupon, the documents heretofore marked for identification as "Employer's Exhibits 10, 11, and 12" were received in evidence.)

By Mr. PANTZER:

Q. Are you familiar with the Manual of Interior Guard Duty?

A. Yes, sir; I am.

Q. I show you Field Manual 20–100, issued by the War Department, which is called The Basic Field Manual or the Soldier's Handbook, edition of July 23, 1941, and ask you to look at Page 136 and 137 thereof.

A. Yes, sir.

Q. I now show you Employer's Exhibit No. 13 and ask you whether that is a photostatic copy of the face of that basic field manual.

A. Yes, sir.

Q. And Pages 136 and 137?

A. Yes, sir; that's it.

Mr. PANTZER. The Employer now offers Employer's Exhibit No. 13 in evidence.

124 (Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 13" was received in evidence.)

By Mr. PANTZER:

Q. Calling your attention to the almost identical wording of the General Orders of the Military Guard in active military duty and the Auxiliary Military Policemen, as set forth in Employer's Exhibit No. 11——

Trial Examiner SHROYER: Any objections? No objection. It was admitted.

By Mr. PANTZER:

Q. Referring to Employer's Exhibit No. 11, I call your attention to the third General Order "to report all violations of orders I am instructed to enforce."

A. That's right.

Q. To whom do you report such violations? What do you do under that order?

A. I would report any violation, any serious violation, to Capt. Wetenhall of Cincinnati.

Q. And who instructs you to enforce orders?

A. It would be the government.

Q. Do you take any orders from Mr. Wood who sits here in the court-room and is the personnel director of E. C. Atkins and Company?

A. Yes, naturally; I work very closely with Mr. Wood, as he is personnel director of the plant and there can be much more efficient guarding of the plant and operation of the plant if
125 we do work closely. I have never taken an order as such from him.

Q. You try to cooperate?

A. I try to cooperate to the best of my ability and he does the same for me.

Q. I note that Order No. 10 directs you to salute all officers and all colors and standards not cased. Is it customary for the Military Police to salute the officers of the Army and Navy?

A. Yes, sir. One of our men got a pretty stiff bawling out for failure to do that several months ago and embarrassed me very much.

Q. From whom?

A. Capt. Wetenhall of the army.

Q. He exacts that salute from the men?

A. Yes, sir. And returns it when he receives it.

Q. Is Capt. Wetenhall a regular army man?

A. Yes.

Q. Of the corps of Military Police?

A. Yes, sir.

Q. And CMP stands for Corps Military Police?

A. Yes, sir; it does.

Q. I now show you Employer's Exhibits 14, 15, and 16 and ask you what, if anything, an Auxiliary Military Police stationed at either of the Atkins plants would have to do with those
126 three kinds of cards. The first card is number what?

(Whereupon, the documents above referred to were marked for identification "Employer's Exhibits 14, 15, and 16.")

A. Exhibit No. 14, that's a plain, blank for a picture pass and now used in the Armor Plate Division only. A man cannot come in that particular gate and go to work in that building without showing one of these to the guard on duty. That used to be used over the entire plant, the same blank. But the badges have been finished for the Saw Division and the badge supplanted this card here for the Saw Division, but is still in effect for the Armor Plate Division.

Q. By badge, you mean the celluloid badge about 2" in diameter with the employee's picture on it?

A. Yes.

Q. Are those badges worn by the production and Maintenance employees?

A. Yes, sir; they are.

Q. Are those badges worn by the Auxiliary Military Police?

A. No, sir; they are not.

Q. The Auxiliary Military Police wear an emblem on the arm; is that right?

A. Yes, sir.

Q. Which says "Auxiliary Military Police"—on the left arm?

127 Q. The regulation relating to Military Police being the directive that is in evidence; namely, Exhibit 4, is the one that sets forth the way in which those badges are to be worn. Proceed now and tell me what Employer's Exhibit No. 15 is?

A. Exhibit No. 15 is the red pass which passes an employee of the company who is already in the grounds into the Armor Plate Division. For instance a man may be on maintenance work and not be attached to that department but he may have to go in there on business. When that happens, the company issues him the red pass which allows him to go in there and take care of whatever business he has but he cannot go in without showing this red pass to the guard on duty at the door of that particular building. That's Exhibit 15.

Q. What is Employer's Exhibit No. 16?

A. Exhibit 16 is a blank which has two uses: (1) One use of which is when it is used as a gate pass which is good to go in and out of the gate at any time during working hours. It is known as a gate pass. It is not issued to anyone going in unless his business in going in and out of the plant necessitates him having it. For instance, an executive of the plant that goes in and out six or eight times a day does so when he is working, so he would have to have one of these to get in and out of the plant. It is used again—the blank is used with different wording typed in
128 as a temporary gate pass to allow a new employee to go to work who has not yet received his regular picture pass or picture badge. In other words, the same blank is used for two different types of passes with different wording thereon. That is Exhibit 16.

Q. Do you know whether or not the Military Police have any grievance procedure such as unions have?

A. Do you mean within the group?

Q. Yes; suppose that someone disciplines one of the men. What recourse does that man have?

A. He has no recourse at all.

Q. Do the members of the Military Police have seniority rights?

A. No, sir.

Q. What is the fact on that case?

A. Well——

Trial examiner SHROYER. In regard to lay offs?

By Mr. PANTZER:

Q. With respect to lay offs, promotions, and so forth?

A. Of course, we haven't had any lay offs but there naturally would be no seniority, entering that I would not think. But in the matter of promotions, efficiency and ability is the only factor that governs. We have men working with us that have been there
129 lots longer than any of our lieutenants at the present time, but the lieutenants who are there, the last three lieutenants that are promoted, but the three lieutenants are not in any respect the oldest guards in the point of seniority. They happen to have been of extra ability, judgment, other qualities.

Q. Upon being promoted to lieutenant, do they obtain greater pay?

A. Yes, sir.

Q. The question of their length of service would be at the Atkins plant and is no criterion whatever?

A. Wouldn't be accepted in the slightest regard; no, sir.

Q. Now, Mr. Gann, when he was on the stand, referred to general orders which, I take it, are Employers Exhibits 10, 11, and 12 that I entered into evidence while you were on the stand,

Mr. Witness, and also two special orders. What are the special orders?

A. Well, the best way I can describe a special order—most special orders would come from myself.

Q. Are they verbal or written?

A. Well, they are both. Small special orders, nevertheless important enough to be adhered to would be verbal, but a special order which would be a little more complicated or something of that nature would be written down and nailed on the bulletin board in the guards' room and they would read it and follow it.

Q. Do any of the Military Police under your command
130 take any orders from any officer, director, or agent of the Atkins company as such?

A. No; they wouldn't take any orders. Just like myself, they would cooperate in any way they could, but they would only——

Q. Suppose such cooperation involved deviation from such specific order which you had to give. Would they follow your specific order or would they cooperate?

A. They would—that would be their orders—to follow mine; yes, sir.

Q. You would have the same reaction towards such request of cooperation as you would if you had a specific order or a general order to the contrary from one of these superiors, is that right?

A. Yes, sir. In those orders, it says, "No conflicting interest." It means a little different thing there but it means a lot besides. You would follow your Governmental orders first. They would have a much higher priority.

Q. Do you, when you first go on duty, have a formation of any kind, an inspection, a roll call?

A. Not a formal one; no, sir. It would be most informal in our plant. With just nine men you can see who is there at a glance. You wouldn't have to call roll. Inspection is just as quickly done.

Q. Are those guards, when they perform their duty, armed?

131 A. Yes, sir.

Q. With what weapon?

A. With a revolver.

Q. State whether or not the shifts of your guard at your plant rotate or whether they are always the same?

A. The shifts rotate every two weeks.

Q. What do you mean by rotate?

A. I mean that there is entirely—it is my idea, but it seemed a fair way to run it for our particular plant, that they all trade hours every so often and give each other an even break on it, so the 8–4 shift will work from eight until four in the day time for

two weeks and then on a Sunday morning, starting at 8 o'clock in the morning, that shift of men will by and large gravitate to the 12–8 shift, upon which they will stay for two weeks, and on completion of that two weeks, they will revert back to the 4–12 shift, that is the idea, although we don't always go to the letter on that.

Q. That is your idea, is it?

A. Yes, sir; that is my idea.

Q. State whether or not the shifts of the regular production and maintenance employees at the main plant of the Atkins company rotate?

A. No, sir; they don't rotate at all. They are frozen shifts.

132 Q. What you are doing is directly the opposite of what Mr. Wood in the Personnel Department does with the remaining production employees?

A. Yes, sir.

Q. Will you now kindly tell us a little bit more about the kind of instruction which you and your men under your command have received from the Military Police and where that instruction was imparted?

A. Once a week on a Monday at the Ipaco on 16th and Alabama Street, we get one hour of instruction at the hands of the United States Army Corps of Military Police. That instruction is taught by a second lieutenant of the Military Police, under the direction of Capt. Wetenhall and his superior, Col. Rasmussen of the Continuous Superior District and subjects taken up are Military Police subjects only and attendant subjects. For instance, we have had a lot of instruction on judo, which is the art of self-defense. We have had instruction on the use of clubs and fists. We have had guiding law of instruction on pistol marksmanship and the general handling and care of them. We have had instruction on military courtesy by training films, methods of arrest by training films, and of disarmament of persons by training films, which are the property of the army and borrowed from the fort at Ft. Harrison

133 in the state here and returned by the lieutenant. They used sighting bars which are the property of Ft. Harrison showing the men how to sight their pieces (hold revolvers) for accuracy, and also there are other subjects such as fire control and prevention. That will give you a general idea. Some of the other subjects I can't recall just now. All Military Police subjects, every one of them. We have also had close order drill, regular army close order drill on the floor, administered by the lieutenant and his assistants in which we all took part.

Q. What are your hours of work?

A. My own hours?

Q. Yes.

A. I work whenever I think—I work whatever hours I think are advisable to work. They are very scattered and go all around the clock.

Q. You are paid overtime after eight hours in one day?

A. No, sir. I work on a straight salary basis. There is no cognizance at all taken of that when there are any extra hours.

Q. Do you on the average work more than eight hours a day?

A. Well——

Q. How much more?

A. Oh, on an average week after week, it might be ten hours—on an average week after week. Sometimes I work as high as sixteen and twenty and twenty-two, depending on
134 the day and time and circumstances.

Q. But that is left to your own initiative as a military officer?

A. Yes, sir.

Q. Subject nevertheless to any orders you may get from higher authority?

A. Yes, sir.

Q. Do you recognize any of the officials of the plant, as such higher authority? By that, I mean of the company?

A. Not as authority, only that I am hired by the company to afford them protection and that means protection personally as well as protection for the property around them. Naturally they, the officers of the company, are very valuable property. I would regard them as the most valuable property we have to protect, but not as superiors. Anything we guards do—I might explain it in this way—if you look on the bottom of the large letter, you will see at the bottom the motto of the Auxiliary Military Police, "Production must not be interrupted." That is the rule by which we live. Anything that would tend to interrupt production, whether it would be tampering with machinery or personnel or anything else.

Q. What would you do if you found Mr. Wood tampering with machinery or personnel or committing sabotage?

A. Well, in a case like that, I would just turn him in,
135 like anybody else. I would arrest him and turn him in because I am sworn to do that. I have sworn an oath.

Q. Would you do the same with the president of the company?

A. Yes, sir; I would.

Q. And you own no responsibility to the president or any director of the company which would make you violate your oath to the Military?

A. No, sir; there is no reason for that.

Q. You have stated that your pay is on a weekly basis?

A. Yes, sir.

Q. And that consequently you get no overtime for any special services?

A. No, sir.

Q. In that respect you are like a soldier paid on a monthly basis?

A. Yes, sir.

Q. Officer paid on a monthly basis?

A. Yes, sir.

Mr. PANTZER. I think that is all.

Trial Examiner SHROYER. I don't know whether we had 14, 15, and 16 admitted?

Mr. PANTZER. I beg your pardon. I wish to offer 14, 15, and 16.

Trial Examiner SHROYER. Any objection? If not, they are admitted.

136 (Whereupon, the documents heretofore marked for identification as "Employer's Exhibits No. 14, 15, and 16" were received in evidence.)

Trial Examiner SHROYER. Any questions?

Mr. RICHARDSON. Yes.

Cross examination by Mr. RICHARDSON:

Q. You are the Chief of the Guards?

A. Yes, sir; I am.

Q. In other words, all guards come under your direction?

A. Yes, sir.

Q. You have the right to give them orders? You do give them orders, don't you?

A. Yes, sir; I do.

Q. Do you have the right to recommend them for promotion or discharge? Do you do that?

A. I recommend a man for discharge but I don't discharge him myself.

Q. You have the right to recommend him for discharge?

A. Yes, sir.

Trial Examiner SHROYER. While on the subject, to whom do you recommend?

The WITNESS. To Capt. Wetenhall, Cincinnati, who does the discharging.

Trial Examiner SHROYER. Who issues these two different types of terminations?

137 The WITNESS. He does; he issues those.

Trial Examiner SHROYER. Pardon me.

Mr. RICHARDSON. That's all right.

By Mr. RICHARDSON:

Q. Suppose Mr. Atkins came out and gave you an order. Would you obey that?

A. I never got an order.

Q. If you did, would you obey that order?

A. Well, I wouldn't consider it an order, in the first place. If I could oblige him in any way, without violating federal orders, I would do my best to cooperate with him, but I wouldn't have an order from him in the first place.

Q. Are you paid by check?

A. Yes, sir.

Q. Who signs the check?

A. E. C. Atkins and Company.

Q. What do you mean you are hired by the Government when E. C. Atkins and Company pays you?

A. They pay because the Government makes them pay me.

Q. Have you got any commission in the army?

A. No; not with the Government.

Mr. RICHARDSON. That's all.

By Trial Examiner SHROYER:

Q. These four lieutenants—who made them lieutenants?

138 A. I made three of them myself. One of them was a lieutenant when I came there. He is a very fine man. His work has been satisfactory and I saw no reason to change it.

Q. Whom did you confer with?

A. No one.

Q. You have final authority to do that?

A. Yes, sir.

Q. Without going either through the personnel office or through the Auxiliary Military Police departments?

A. The only thing I did was after I had decided who would be the next lieutenant and furthered that man, made him a lieutenant, myself, in my office, gave him his gold badge and his authority and posted the notice that he was a lieutenant, and then I went to Personnel and advised them that he was the new lieutenant.

Q. He got his increase in pay?

A. Yes.

Q. Who made you the Chief?

A. I don't know. I was hired just like a regular guard with the idea that I would be Chief after a certain length of time, I became Chief at the Okey of the army and the company.

Q. You are hired at the personnel office to be Chief subject to the approval of the Government?

139 A. Yes, sir. And of course I am inspected by the army and if they don't like me as being Chief, they can "unchief" me very fast.

Q. Are all your guards militarized?

A. All but two or three that are brand new men and will be in a week or so.

Trial Examiner SHROYER. That's all.

Redirect examination by Mr. PANTZER:

Q. In connection with your administrative duties, do you carry on any correspondence with Mr. Wood or any officials of the plant?

A. No, sir.

Q. Do you carry on any correspondence with the Cincinnati office of the Military Police?

A. Yes, sir.

Q. With Captain Wetenhall?

A. Wetenhall's office.

Q. Do you have before you there the file of that correspondence?

A. Yes, sir; I think it is here.

Q. And that file is about one inch thick now?

A. Yes, sir.

Q. And contains onion skin carbon copies of your letters to Wetenhall and original letters from Wetenhall to you?

A. That's right.

Q. About how often do you write him affecting your
140 duties, responsibilities, and requests for instructions from him?

A. On an average probably of twice a week, is all.

Q. You ask him both for general orders and for specific instructions?

A. Yes; or I might on a small case instead of writing Capt. Wetenhall, I might talk it over with his assistant, Lt. Scanlon in the City of Indianapolis, who lives here.

Q. That wouldn't require correspondence?

A. No.

Q. You could conduct by telephone, too?

A. Yes.

Q. Will you glance through that file and let us know what type of questions you have on occasion taken up with Capt. Wetenhall?

A. Most of these are about men being discharged or hired.

Q. With respect to hiring and discharging?

A. Yes. Asking him for passes to be sent to me that I can have the finger prints and the facts printed in and things of that nature. Do you want me to read one of these letters?

Q. Yes, if you have a characteristic letter.

A. "Continuous Security District, P. O. Box 1750, Cincinnati,
Ohio. Attention: Capt. Wetenhall. Gentlemen: Attached you will find two guards' passes of which the one on Carl Taber
141 is to be cancelled with an honorable discharge. You will

note on the second one, which is made out on Garnet J. Williams, that it has not been signed to you. Evidently that was overlooked, so I will appreciate it if you will sign Williams' pass and return it to me. Yours very truly, Henry A. Johnston, Chief of Guards, E. C. Atkins and Company."

Q. If a man is drunk on duty have you the right to discharge that man?

A. I couldn't discharge him legally; no, sir.

Q. Could you suspend him?

A. I would merely suspend him from duty as of the minute I saw him in that condition.

Q. What would be your next step?

A. To sit down and write Capt. Wetenhall a letter and I would recommend his discharge from the Military Police.

Q. Do you recommend discharge to Mr. Wood of the Personnel office?

A. I follow through on that so that the same record—the record will be set straight.

Q. Which one discharges?

A. The Government does the discharging from the Military Police.

Q. Mr. Wood couldn't discharge the man, could he, under these regulations?

A. Not under those regulations.

142 Mr. PANTZER. That is all.

Trial Examiner SHROYER. Any further questions?

Mr. RICHARDSON. No.

Trial Examiner SHROYER. That's all. We will take a five-minute recess.

(Witness excused.)

(Whereupon a five-minute recess was taken.)

CYRUS E. WOOD called as a witness by and on behalf of E. C. Atkins and Company, being first duly sworn, was examined and testified as follows:

Trial Examiner SHROYER. Give your name and address to the reporter.

A. Cyrus E. Wood; 634 West Maple Road, Indianapolis, Indiana.

Direct examination by Mr. PANTZER:

Q. State, Mr. Wood, what your relation is to E. C. Atkins and Company, the employer in this case.

A. Personnel Director for the various plants of E. C. Atkins.

Q. How long have you been employed by the Atkins company?

A. 37 years this fall.

Q. How long have you been Personnel Director?

A. Seven years, actual. Previous to that time, about five years, I was known as Force Director, which eventually developed to the personnel work.

143 Q. You have been in actually?

A. Have since 1937.

Q. About the time that the CIO organized the production workers, exclusive of saw smiths?

A. That's right.

Q. What two unions do you have at your plant?

A. We have the saw smiths local union affiliated with A. F. of L. and U. S. A. Local affiliated with United States Saw Smith Workers of America.

Q. I am going to refer to them as the Saw Smiths' local and the CIO. How many employees have you in the Saw Smiths' local at the present time?

A. 59.

Q. Now there are 59 saw smiths; is that right?

A. That's right.

Q. Do the apprentices to saw smiths attain active membership in the Saw Smiths' local?

A. No.

Q. Do the brake press operators, which in a sense, do some of the work that the saw smiths do, attain active membership in that local?

A. No, sir.

Q. But neither the apprentices to saw smith nor the brake press operators are members of the CIO?

144 A. That's right.

Q. How many of your employees are members of the CIO?

A. As near as I can tell you now, about 1,208.

Q. How many of your employees at the main plant are plant guards or Auxiliary Military Police?

A. Thirty-two.

Q. When you say your employees, they are your employees only in the sense that you pay their wages; is that right?

A. That is correct.

Q. And you make the necessary pay-roll deductions?

A. That's right.

Q. How many of those Auxiliary Military Police are stationed at the Fall Creek Ordnance Plant?

A. Thirty.

Q. Now then, have you mentioned now all the persons, the individuals, who are occupied either in production work or as Auxiliary Military Police at both those plants?

A. That is correct.

Q. Is the Saw Smiths' Union a closed shop?

A. Yes; it is.

Q. Is the CIO a closed-shop union?

A. It's a union shop.

Q. And substantially all the production workers do belong to that?

A. That's correct.

145 Q. All of them?

A. Yes.

Q. Now then, state who is the owner of the plant and improvements at your main plant?

A. E. C. Atkins and Company.

Q. Who is the owner of the land, improvements, machinery, and fixtures at the Fall Creek Ordnance plant?

A. The United States Government.

Q. State in what capacity E. C. Atkins and Company operates that plant?

A. The plant is operated upon a lease.

Q. Lease from the Federal Government?

A. That's correct.

Q. And the terms and conditions of that lease are confidential for military reasons?

A. That is correct.

Q. So that it would be a breach of military confidence to introduce that lease in evidence?

A. That's right.

Mr. PANTZER. We beg, therefore, Mr. Examiner, to be relieved of what would be by me the obligation of producing that lease in evidence and advising what its terms are.

Trial Examiner SHROYER. Surely.

By Mr. PANTZER:

Q. Is the Fall Creek Ordnance Plant treated by the E. C.

146 Atkins company in the light of a military reserve?

A. It is.

Q. And is it so treated by the military authorities?

A. It is.

Q. That is not the case with the main plant on Illinois Street?

A. No, sir.

Q. That is a plant which belongs to the Atkins company?

A. That is right. It is listed, however, as a restricted area under government supervision.

Q. I now show you Employer's Exhibit No. 17 and ask you whether that is a photostatic copy of the existing contract between E. C. Atkins and Company and the CIO Local?

(Whereupon, the document above referred to was marked for identification as "Employer's Exhibit No. 17.")

A. This is a contract that is now in force; yes.

Mr. PANTZER. I offer Employer's Exhibit No. 17 in evidence.

Trial Examiner SHROYER. Is there any objection?

Mr RICHARDSON. No.

Trial Examiner SHROYER. There being no objection, it may be admitted.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit No. 17" was received in evidence.)

147 Q. I show you Employer's Exhibits No. 18, 19, and 20 and ask you what they are?

(Whereupon, the documents above referred to were marked for identification as "Employer's Exhibits No. 18, 19, and 20.")

A. *Exhibit No. 18 is our original agreement negotiated as of July 1940* with the Saw Smiths' Local Union No. 18548, affiliated with the A. F. of L. Exhibit No. 19 is an addendum to the original agreement of July 1940, entered into between the Saw Smiths' Union and E. C Atkins and Company to allow the use of other than anvil men on brake presses to straighten armor plate to expedite production of government orders. No. 20 is an addendum that was drawn up at the time of the discussion in regards to the use of brake press operators and shows a period of time over which an experiment was carried out to see whether we could produce the required amount of armor plate without the addition of brake press operators.

Trial Examiner SHROYER. May I ask if the company has any quarrel with the inclusion of the two plants by the union in one unit or whether or not it all goes to the main shop?

Mr. PANTZER. It all goes to the main shops. I want to say this in answer to your question; that at a representation hearing at which both the CIO Local and the Saw Smiths' Local were

148 parties and represented, held in January 1 hearing, lasting for four days, the company took the position that the employees of both the main plant and the Fall Creek Ordnance Plant belong to one bargaining unit, a position which was sustained by the Board.

Trial Examiner SHROYER. And the contracts so written?

Mr. PANTZER. The contracts were so written. It would be out position that if the employer is wrong on its main contention, that the National Labor Relations Board does not provide for bargaining between what you might call almost an independent contractor and a labor union, that the employees of both plants belong to one bargaining union. I understand that was also Mr. Richardson's position taken in the very amicable conference we had be-

fore Mr. Getreu, the field examiner at the Indianapolis office. That is right, Mr. Richardson?

Mr. RICHARDSON. That is right.

Trial Examiner SHROYER. I didn't want to interrupt you.

Mr. PANTZER. I surely think we should get it in the record.

Trial Examiner SHROYER. Thank you.

Mr. PANTZER. I offer Employer's Exhibits No. 18, 19, and 20.

Trial Examiner SHROYER. If there s no objection, they may be admitted into evidence as as Exhibits No. 18, 19, and 20.

149 (Whereupon, the documents heretofore marked for identification as "Employer's Exhibits No. 18, 19, and 20" were received in evidence.)

By Mr. PANTZER:

Q. Your relationships with the Saw Smiths' Union so far as it has been reduced to writing, is evidenced by these three documents, No. 18, 19, and 20?

A. That is correct.

Q. Before the Atkins company became engaged in defense work, will you kindly state how many watchmen were employed as employees by the Atkins company?

A. It varied from four to six. We had two night watchmen on patrol called clock men—made the rounds regularly through the plant and pulled the 82 boxes. The night clocks.

Q. You had four day men?

A. No; two day men at the gates. Frankly, they were, at that time that was a pensioner's job.

Q. You now have a total of Auxiliary Military Police of how many at both plants?

A. Sixty-four.

Q. This increase in the staff required to guard and protect the plant has been occasioned by the participation of the Atkins company in the war effort and the insistence of the Military that the plant be adequately protected against sabotage and similar happenings, is that right?

A. At the beginning of our participation in the produc-

159 tion of war materials; namely, armor plate, representatives from the Cincinnati office came into our plant and made a survey and gave us a recommendation of the requirements of the Government insofar as plant production would be considered and that was submitted in writing and complied with.

Q. When you say the Cincinnati office, you mean the Cincinnati Ordnance Office?

A. Ordnance Office.

Q. Are most of your contracts with the Ordnance Department?

A. We have had dealings in the past and have complied with the recommendations of both the army and navy. The major part of our control was of the army and at this time is practically all controlled by army interests.

Q. Was it the Ordnance Department that insisted upon your switching over from a watchman basis to an Auxiliary Military Police basis or was it the Military Police?

A. It was the army representatives from the Ordnance Department of Cincinnati, out of Col. Rasmussen's office that required it.

Q. As a result of that insistence the Auxiliary Military Police were employed?

A. That is correct.

Q. State whether or not, Mr. Witness, the Atkins company could retain any of its war contracts if it did not submit to
151 the system of Auxiliary Military Police that is now in force at the plants?

A. It is understood and the majority of contracts submitted, you will find the clause stating that unless proper protection of Government property is provided in compliance with certain directives, that will be issued from time to time, some of these special contracts will be or might be cancelled and fact of the matter is would be if we did not comply with the interests.

Q. You have heard the testimony of Chief Johnston on the stand with respect to the right of E. C. Atkins and Company to hire or discharge Military Police, is that right?

A. That's right.

Q. Is his testimony with respect to that correct?

A. It is correct.

Q. Is his testimony with respect to your being permitted to make recommendations but not being permitted to give orders respecting the duties of the Auxiliary Military Police correct?

A. It is correct.

Q. You have been able to work in cooperation with the Auxiliary Military Police?

A. We have; yes.

Q. Have you ever attempted to exercise any of the authority which you are prohibited from exercising by
152 military orders over any of these sixty-four members of the Military Police?

A. Not to my knowledge.

Q. Or has any foreman or hiring officer or director of Atkins and Company attempted to exercise such a right?

A. No.

Q. Instructions have been promulgated, have they not, throughout the entire plant that the Miliary Police are the business and affairs of the military authorities?

A. That's correct. It is understood, sir.

Q. Those two sets of contracts that I gave you provide for seniority in the case of your regular production-maintenance employees, do they not?

A. That's correct.

Q. And are those rules respecting seniority enforced as to those employees?

A. Oh, yes.

Q. Are they enforced by you with respect to the Auxiliary Military Police?

A. No.

Q. Does the same apply with respect to grievance procedure? In other words, the grievance procedure is not a part of the discipline of the Auxiliary Military Police? They have their own discipline?

A. That's right.

153 Q. What would you do, Mr. Witness, if one of the Auxiliary Military Police came to you and protested to any action of a disciplinary nature by Chief Johnston?

A. Report that to the proper authorities, in this case to Col. Rasmussen in Cincinnati. He is the man that my office deals with when necessary.

Q. You would take no jurisdiction yourself?

A. No; not without instructions from Col. Rasmussen.

Q. You do, whenever matters of discipline are taken up in your plant get confirmation of any instructions which Col. Rasmussen or Capt. Wetenhall sent to Chief Johnston or to Chief Hann, is that right?

A. That's right.

Q. Do you give any military instructions to your regular employees at the Atkins company?

A. No.

Q. Are they required to salute?

A. No, sir.

Q. Who has the right to discharge the employees?

A. Plant employees?

Q. Plant employees.

A. I do.

Q. You and the foremen?

A. The foremen can recommend the discharge. The actual discharge has to take place through the general superin-

154 tendent or myself.

Q. In the CIO contract?

A. Yes, sir. That's right.

Q. I ask you whether anyone other than Auxiliary Military Police down at your plant is entitled to carry an identification card such as is set forth on Employer's Exhibit No. 3?

A. No, only the Auxiliary Military Police are issued these cards.

Q. Are they issued by your office?

A. They are not. They are issued by the Cincinnati office.

Q. With respect to the production employees and the officers, directors and other agents of E. C. Atkins and Company, what kind of an identification card is issued?

A. We have small cards, a card that was early requested by the Ordnance Division to carry a man's photograph, his thumb prints, and a description, a general description.

Q. I show you Employer's Exhibit No. 21 and ask you whether that is a photostatic enlargement of this, your own card?

A. That is correct.

(Whereupon, the document above referred to was marked for identification as "Employer's Exhibit No. 21.")

Mr. PANTZER. I offer Employer's Exhibit No. 21 in evidence.

Trial Examiner SHROYER. If there is no objection, it
155 may be admitted.

(Whereupon, the document heretofore marked for identification as "Employer's Exhibit 21." was received in evidence.)

By Mr. PANTZER:

Q. In addition to the identification card, Employer's Exhibit No. 21, do you and all the other officers, directors and production and maintenance employees of the Atkins company wear identification badges?

A. We do.

Q. About 2 inches in diameter with your photograph on them?

A. 2 inches in diameter at the South Street plant and 1½ inches in diameter in the Fall Creek.

Q. Do the Auxiliary Military Police wear such identification badges?

A. They do not.

Q. When a person applies for employment as an Auxiliary Military Policeman, where does he fill out the application from which Employer's Exhibit No. 5 is taken? Is that done in your office?

A. Yes, sir.

Q. Your office both in the main plant and the Fall Creek plant?

A. Yes.

Q. Do you have the authority to accept that application for the military authorities?

A. I can accept that only subject to the approval or
156 disapproval of the Cincinnati office. We select or rather we interview and select prospective guards. Those men are in turn, their names are submitted to the Cincinnati office along with the proper papers that are provided by the Government for them to fill out. By their approval they are permanently inducted into the Military Police group, or upon their rejection, they would be given their dismissal papers.

Q. When you say you select them, as a matter of fact, all you do is just to recommend the man to them?

A. I interview, but recommend them.

Q. When they have been recommended, do you know whether or not the military authorities make an independent investigation as to the capacity, integrity, and patriotism of the man whom you have recommended?

A. In the past two years, it has come to my attention, for no statement has been made, that they do, but the report has come back which made it necessary to remove a man on the force.

Q. Is that so that you are satisfied that an independent investigation is made?

A. That's correct.

Q. In addition to what you have learned in the court room today from Chief Johnston?

A. Yes.

Q. When a badge and identification ticket are issued to
157 new employee in your Production Department, state whether or not the applicant is registered with the Federal Bureau of Investigation and the Indianapolis Police Department?

A. That is correct.

Q. Is that then done in the case of Auxiliary Military Police?

A. That's right.

Q. That is done with respect to both of them?

A. That's right.

Q. I now show you Employer's Exhibits No. 22 and 23, and ask you whether they are copies of such records?

A. These are copies of the forms filled out for the Federal Bureau of Investigation and for the local police departments, Subversive Division, Indianapolis Police Department.

Trial Examiner SHROYER. They may be received in evidence.

(Whereupon, the documents heretofore marked for identification as "Employer's Exhibits No. 22 and 23" were received in evidence.)

Mr. PANTZER. That's all.

Trial Examiner SHROYER. Any further questions?

Mr. RICHARDSON. Yes.

Cross-examination by Mr. RICHARDSON:

Q. Mr. Wood, when employers on the guard force are hired, who sets the rate of pay?

A. The rate of pay was established when we filed our
158 schedule October 3, 1942, with the Wage and Hour Division.

Q. The company set that rate of pay at that time?

A: That's right.

MR. RICHARDSON. That's all.

Trial Examiner SHROYER. Have you any further questions? I have none. Thank you very much.

(Witness excused.)

MR. WOODS. I have another job. May I be excused?

Trial Examiner SHROYER. Yes.

MR. PANTZER. The employer rests.

Trial Examiner SHROYER. Do you think, Mr. Pantzer, can you tell me whether or not there is any unusual degree of expansion in this guard unit as contemplated at any time within the next month?

MR. PANTZER. No; I would say not.

Trial Examiner SHROYER. Do either of the parties wish any oral argument at this time?

MR. PANTZER. We would like to file a brief.

Trial Examiner SHROYER. What about you, Mr. Richardson?

MR. RICHARDSON. I was in hope it would be settled here now. I would be willing to let the case rest in the hands of the Board.

Trial Examiner SHROYER. You do not intend to file a brief?

MR. RICHARDSON. No.

159 Trial Examiner SHROYER. The present rules, Mr. Pantzer, are that you have seven days in which to file a brief.

MR. PANTZER. Seven days from today?

Trial Examiner SHROYER. That is right.

I believe you also stated at the beginning of the hearing that you wish to renew your motion to dismiss at this time? Do you care to make any additional statement?

MR. PANTZER. No. May I just by so saying renew that motion without repeating the language—the motion to dismiss which I made at the beginning of the hearing?

Trial Examiner SHROYER. I will allow that and I will refer the motion to the Board.

Is there anything further coming before the Trial Examiner? If there is nothing further, the hearing is closed.

(Whereupon at 5:00 p m., the hearing was closed.)

161 *Board's Exhibit 1–A*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683, PETITIONER

NOTICE OF HEARING

The Petitioner, above named, having heretofore filed with the National Labor Relations Board, Ninth Region, a Petition for Investigation and Certification of Representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, copy of which Petition is hereto attached, and it appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

You are hereby notified that pursuant to Section 9 (c) of the Act, on the 24th day of September 1943, at 10:00 o'clock in the forenoon, Central War Time, in Room 247, Federal Building, Indianapolis, Indiana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place the parties, above named, will have the right to appear in person, or otherwise, and give testimony, and persons or labor organizations desiring to intervene and to participate in the proceeding may petition for leave to do so in accordance with Article III, Section 5, and Article II, Section 19, of the Board's Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Acting Regional Director for the Ninth Region on this 16th day of September 1943.

[SEAL]

Rosemary S. Macke,
ROSEMARY S. MACKE,
Acting Regional Director,
Ninth Region, National Labor Relations Board.

162

United States of America
Before the National Labor Relations Board
Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE LOCAL 1683

FIRST AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(C) OF THE NATIONAL LABOR RELATIONS ACT

1. Name of employer: E. C. Atkins and Company.
2. Address: 402 South Illinois Street, Indianapolis, Indiana.
3. General nature of business: Manufacture of war materials.
4. Description of the bargaining unit which petitioner claims is appropriate: All plant guards employed by the company at its two Indianapolis, Indiana plants (E. C. Atkins and Company and Fall Creek Ordnance Plant) excluding sergeants, lieutenants, captains, and chief.
5. Approximate number of employees in such unit: 64.
6. Approximate total number of employees in plant or plants involved: 2,000.
7. Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining: 100%.
8. Who is the present bargaining representative of employees? None.
9. Names, addresses, and affiliation of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit: None.
10. Is there an existing or recently expired contract and, if so, give expiration date? No.
11. The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that the union notified the company on August 18, 1943, by letter, that they represented a majority of the employees in the above unit, and requested recognition as their collective bargaining agent. The company has not replied to this letter and in a joint conference between the parties held on September 10, stated that they did not feel that a unit of guards was appropriate.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9 (*c*) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the full name, local number and affiliation of the organization and the name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683.
By F. M. Richardson,
F. M. RICHARDSON,
Business Representative,
49½ South Delaware Street,
Indianapolis, Indiana. Market 8103.

Subscribed and sworn to before me this 10th day of September 1943 at Indianapolis, Indiana.

John C. Getreu,
JOHN C. GETREU,
Field Examiner, Ninth Region.

164 *Board's exhibit 1–B*

TRIAL EXAMINER'S STATEMENT IN "R" CASES

In relation to the Board's investigation concerning the selection of representatives for the purposes of collective bargaining in this case, it is desired at the outset to make clear the position of the trial examiner. The sole objective of the trial examiner here is to obtain a full and complete factual record upon which the Board itself may discharge its duties under Section 9 of the National Labor Relations Act.

It is the duty of the trial examiner to see that the record is full enough to contain all the material evidence but to limit the testimony and refuse to permit the introduction of evidence which is not material and relevant. His discretion is limited by this duty with which he is charged. Your attention should also be called to the fact that, in this type of case, as distinguished from a case where the employer is charged with the commission of unfair labor practices in violation of the Act, the trial examiner does not render an intermediate report to the parties. The case goes directly to the Board for decision.

In general, the trial examiner will present evidence bearing upon the question of the Board's jurisdiction over the parties and the

subject matter of the investigation, while the representatives of the other parties will be expected (with the assistance of the trial examiner if necessary) to present evidence upon the remaining issues. These issues include a description of the labor organizations involved, facts relating to the question concerning representation which is alleged to have arisen, the limits of the appropriate unit for collective bargaining, and the eligibility of employees for voting in any election which may be ordered. The services of the trial examiner are equally at the disposal of all parties to the proceeding in developing such material evidence.

More specifically the evidence should disclose, as to the labor organizations involved, their identity, time of formation, and general structure, including data as to eligibility of members, with particular reference to the employer here concerned. The nature of the question concerning representation should be shown by proof as to whether conflicting claims as to representation are being made, or whether the employer questions the representative status of any of the parties. Likewise the time when organization began, the department or group of employees affected, the subsequent growth or decline of membership, present claims as to membership, and relations had with the employer, including requests for collective bargaining and the presence or absence of contracts, are all of importance.

In considering the appropriate unit for purposes of collective bargaining, the proof should reveal the physicial properties involved, a break-down of the nature of work performed by employees as well as an analysis of the numbers of employees engaged in each type of work. The presence or absence of craft organizations should be established, as well as evidence submitted on the identity or differentiation of employees' problems as to wages, hours, or working conditions. The history of bargaining units in the plant or in the industry should be disclosed. Information is also desired as to the date as of which the payroll of eligible voters should be taken, for purposes of election or certification.

These suggestions are of necessity not all-inclusive. They may, however, serve to guide the parties to a full and complete factual presentation in which the trial examiner will, in an entirely neutral capacity, assist. The cooperation of all in order to get these facts as expeditiously as possible is required.

165 *Board's Exhibit 1–C*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683

AFFIDAVIT AS TO SERVICE

STATE OF OHIO,
County of Hamilton, ss.

I, Helen M. Klensch, being duly sworn, deposes and say that I am an employee of the National Labor Relations Board, in the Ninth Region at Cincinnati, Ohio; on the 16th day of September 1943, I served by postpaid registered mail, bearing Government frank, a copy of Notice of Hearing, copy of Petition, and Trial Examiners' Statement, to the following named persons, addressed to them at the following addresses: E. C. Atkins and Company, 402 South Illinois Street, Indianapolis, Indiana; International Association of Machinists, District 90, and Local 1683, % Mr. F. M. Richardson, Bus. Rep., 491½ South Delaware Street, Indianapolis, Indiana.

HELEN M. KLENSCH.

Subscribed and sworn to before me this 18th day September 1943.

SYLVIA P. MAX,
Designated Agent,
N. L. R. B., Ninth Region.

166 *Board's Exhibit 2*

FH1–3 33 Govt. Ser. SEPTEMBER 22, 1943.

E. C. ATKINS AND CO.,
402 South Illinois Street, Indianapolis, Indiana.

KURT F. PANTZER, Esq.,
BARNES, HICKAM, PANTZER AND BOYD,
1313 Merchants Bank Bldg., Indianapolis, Ind.

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND LOCAL 1683,
Care Mr. F. M. Richardson, bus. rep.
49½ South Delaware St., Indianapolis, Indiana.

Re E. C. Atkins and Co., Case No. 9–R–1200.

Please take notice that on request of respondent, hearing in this case postponed from 10:00 a. m. to 1:30 p. m. same date and place.

ROSEMARY S. MACKE,
Acting Regional Director,
National Labor Relations Board, Ninth Region.

9–R–1200 10:00 a. m. 1:30 p. m.

167 SEPTEMBER 22, 1943.

E. C. ATKINS AND CO.,
402 South Illinois St., Indianapolis, Indiana.

KURT F. PANTZER, Esq.,
Barnes, Hickam, Pantzer & Boyd,
1313 Merchants Bank Bldg., Indianapolis, Ind.

INTERNATIONAL ASSOCIATION OF MACHINISTS,
District 90 and Local 1683,
c/o Mr. F. M. Richardson, Bus. Rep.
49½ South Delaware St., Indianapolis, Indiana.

Re: E. C. Atkins Co., Case No. 9–R–1200

Please take notice that on request of respondent, hearing in this case postponed from 10:00 a. m. to 1:30 p. m., same date and place.

ROSEMARY S. MACKE,
Acting Regional Director,
National Labor Relations Board, Ninth Region.

168 *Board's Exhibit 3*

AUGUST 18, 1943.

MR. E. C. ATKINS,
President, E. C. Atkins & Company,
402 South Illinois Street, Indianapolis, Indiana.

DEAR MR. ATKINS: This will advise you that the Plant Protection employees, guards, of your company have selected District No. 90, and its affiliated Local Lodge 1683, as their collective bargaining agency exclusive of the chief of the force, office, production and maintenance employees, and plant supervision.

Therefore, we are prepared to furnish you with proof of this claim in any manner suitable to you.

Awaiting your reply, I remain,

Yours very truly,

FRANK RICHARDSON,
Business Representative, District No. 90.

R/as.
CC. Heisel.

169 *Board's Exhibit 4*

United States of America

Before the National Labor Relations Board

Third Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE, LOCAL 1683

STATEMENT OF FIELD EXAMINER CONCERNING CLAIMS OF AUTHORIZATION FOR THE PURPOSE OF REPRESENTATION

The undersigned, Field Examiner for the National Labor Relations Board, Ninth Region, has investigated the petition filed in the above entitled case.

In connection with the investigation petitioner has submitted to me certain evidence in support of its allegation that petitioner represents a majority of the employees in the alleged appropriate unit. This evidence consisted of 51 designations in the following form:

AUTHORIZATION FOR REPRESENTATION UNDER THE NATIONAL LABOR RELATIONS ACT

I, the undersigned employee of the _____
(Print full name of Company)
employed as _____
(Print your occupation or a description of your job)
at _____
(City) (State) (Location of Shop)
Home address _____

hereby authorize the International Association of Machinists, affiliated with the American Federation of Labor, to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages and other employment conditions in accordance with the provisions of the National Labor Relations Act of July 5, 1935.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me, and shall remain in full force and effect for one year from date and thereafter, subject to thirty (30) days written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

_____ _____
(Date) (Signature of employee)

_____
(Witness)

170 51 of the 51 signatures affixed to said designations appear to be genuine original signatures. 44 of the 51 signatures which appear to be genuine original signatures are the names of persons whose names are on the Company's pay roll of September 10, 1943, covering the alleged appropriate unit. The said pay roll contains the names of 63 persons within the alleged appropriate unit.

The designations containing apparently genuine signatures and bearing the names of persons appearing upon the Company's pay roll were dated as follows: 28, August 1943; 16, Undated; 44, Total.

Dated at Indianapolis, Indiana this 11th day of September 1943.

John C. Getreu,
JOHN C. GETREU,
Field Examiner, Ninth Region,
National Labor Relations Board.

171 *Respondent's Exhibit 1*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683, PETITIONER.

APPLICATION FOR SUBPOENA DUCES TECUM DIRECTED AT F. M. RICHARDSON TO PRODUCE UNION RECORDS

Comes now E. C. Atkins and Company, one of the parties to this proceeding, and respectfully applies for a subpoena duces tecum directed at F. M. Richardson, Business Representative, International Association of Machinists, District 90, and their affiliate, Local 1683 (hereinafter referred to as the "Union"), one of the parties to this proceeding, to produce the following documents:

1. Charter, Constitution and Bylaws of the Union;

2. Minute book, membership roll, application cards, membership cards, dues books, bank book, check book, cancelled checks, correspondence and other records relating to the purposes,
172 activities and membership of said Union; in order that E. C. Atkins and Company may establish (a) the identity of the Union, within the purview of Section 2, subsection (5) of the National Labor Relations Act; (b) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chiefs," are "employees" within the purview of Section 2, subsection (3) of the National Labor Relations Act; (c) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chiefs," have "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection," within the purview of Section 7 of the National Labor Relations Act; (d) whether it is an unfair labor practice for E. C. Atkins and Company "to refuse to bargain collectively with the representatives of" all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," within the pur-

view of Section 8, subsection (5) of the National Labor
173 Relations Act; and (c) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," can properly be found to be a "unit appropriate for the purposes of collective bargaining," with in the purview of Section 9, subsection (b) of the National Labor Relations Act.

E. C. ATKINS AND COMPANY,
By KURT F. PANTZER,
Attorney.

174 *Respondent's Exhibit 2*

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA

and

PLANT GUARD

In order that the existing military forces of the United States may be most effectively employed in combat activity against the enemies of the United States, the United States is approving the employment of certain guards as a civilian auxiliary to the military police for the purpose of guarding and protecting war material, war premises and war utilities from injury or destruction by the enemy or otherwise, including the making of arrests, as peace officers for violations of Federal laws, as well as for violations of orders and regulations issued by military authority. The United States requires that only persons physically fit, well trained in the use of arms and in the duties incident to their position, and of unquestionable loyalty to the United States be so employed.

Now, therefore, I, _____, who have been or am about to be employed by _____ as a guard at _____ for the purpose of guarding certain war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that:

(1) I will support and defend the Constitution of the United States against all enemies, foreign and domestic.

(2) I will bear true faith and allegiance to the Constitution of the United States.

(3) I will well and faithfully discharge my duty as a civilian auxiliary to the military police to protect war material, war premises, and war utilities against all enemies, foreign and domestic, and will obey any orders issued in connection therewith by the

President, as Commander-in-Chief of the Army and Navy of the United States, and by his duly authorized officers.

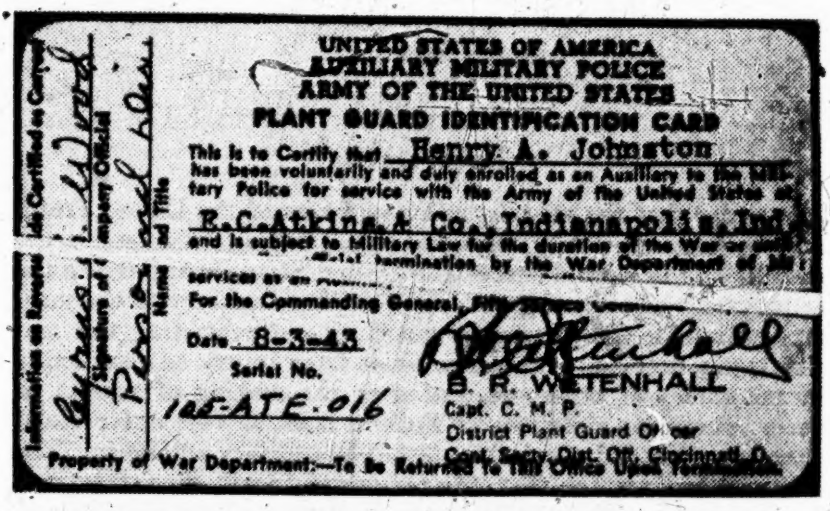
(4) I acknowledge that the appropriate Articles of War have been read and explained to me, and that in the performance of my duty to protect such war material, war premises, and war utilities, I am subject to military law during the period of my employment.

_____
(Signature)

_____
(Witness)

_____
(Date)

175 *Respondent's Exhibit 3*



176 *Respondent's Exhibit 4*

WAR DEPARTMENT
CONTINUOUS SECURITY DISTRICT OFFICE
904 Enquirer Building
CINCINNATI, OHIO

ACR/hc.

To insure prompt attention in replying refer to PPDB, No. Sect. V-1 Plant Guard Section.

Plant Protection Data Binder, Section V, Letter 1, Dated June 7, 1943

Subject: The Auxiliary Military Police.

1. Executive Order No. 8972, dated December 12, 1941, authorizes the Secretary of War and the Secretary of the Navy, "to establish and maintain military guards and patrols, and to take other appropriate measures to protect from injury and destruction," certain strategic premises, materials, and utilities. In accordance therewith the Secretary of War directed the military organization of plant guard forces as Auxiliary Military Police.

2. These guard forces will be organized as a civilian Auxiliary to the Military Police in all plants producing war material important in the war effort.

3. At the time any guard force is organized, the Commanding Officer having jurisdiction over the force will:

(*a*) Cause the Articles of War to be read and explained to each member of the guard force (see para. 18).

(*b*) Issue orders and regulations setting forth the duties and responsibilities of the guard force.

(*c*) Organize each guard force with a member of the Army of the United States in command and cause each force to be drilled and instructed with a view to supplementing the Army in resisting attack on war material, war premises and war utilities which the force is assigned to guard.

(*d*) Require each member of the guard force to give a pledge of loyalty to the United States, and to execute an agreement acknowledging that such Articles of War are understood by him and that he is subject to military law as long as he remains a member of the guard force. (A copy of the Guard Agreement is attached, CIPP 124.)

177 4. The purpose of organizing the plant guard force is to increase the authority, efficiency, and responsibility of the

guard forces at plants important to the prosecution of the war, and through military training to provide auxiliary forces throughout the United States to supplement the Army in wartime emergency situations.

5. Nothing in this letter will be construed as modifying the responsibility of the plant managements for providing adequate protection at all times against all hazards. The District Plant Guard Officer may, however, take appropriate action through the plant management to correct any condition deemed by him to result in or threaten defective or inadequate performance by the guard force of its ordinary protective duties.

6. The mission of a guard force of Auxiliary Military Police is:

(a) To provide interior and exterior protection of the plant against sabotage and espionage and natural hazards.

(b) To serve with the Army in providing the protection to the plant and its environs in emergency situations.

7. An emergency situation in which the Auxiliary Military Police may be called upon for military service may arise from flood, conflagration, or other disaster; internal disorders hazardous to property or production important to the prosecution of the war; protection from air raid; Fifth Column activity; paratroop attack or invasion; or it may arise from any other condition or circumstances involving the plant or its community.

8. A guard force, or any member thereof, whether on or off duty, may be assigned to duty in an emergency at places other than the premises of the plant normally served, provided only that in the opinion of the District Plant Guard Officer or other representative of the Army in command such assignment will contribute to the protection of the guard force's own plant and its environs or to the protection of its production.

9. In addition to the regular plant guards other groups of employees may be inducted as members of the Auxiliary Military Police. The District Plant Guard Officer will determine which groups are eligible.

10. Persons such as firemen, watchmen, and women guards may be included, provided they are able physically to
178 perform the duties and missions of the Auxiliary Military Police described herein and in the agreement signed by the guards.

11. Women guards may be armed, but in view of the Congressional policy that women auxiliary forces be limited to non-combatant duty, it is recommended that in forming plans for any emergency situations requiring the use of force against the enemy such plans will provide for assignment of women Auxiliary Military Police to non-combatant activities.

12. No minimum number of guards is required for the militarization of any guard force. Guard forces, no matter how small, will be militarized if the plants which they guard are so located that the guards can be organized, trained, and commanded efficiently by available Army personnel, and if in the opinion of the District Plant Guard Officer, the results obtainable are commensurate with the effort involved.

13. Employment of an alien as a plant guard must be approved by the Secretary of War in the same manner as employment of an alien having access to work on classified or aeronautical contracts.

14. The Provost Marshal General is charged with the general supervision of the activities relating to the Auxiliary Military Police as a part of the Internal Security program. The commanding generals of the Service Commands are responsible for the military organization, training, and command of the guard forces at the plants and installations within their respective Service Commands and under their jurisdiction.

15. The Commanding General of the Fifth Service Command has designated the Chiefs of the Continuous Security Districts as the Commanding Officers in their various districts. They are also the "Commanding Officer having jurisdiction over the plant guard forces" of plants and installations at which there is no local resident commanding officer. They then appoint District Plant Guard Officers, who are in direct charge of plant guard forces of such plants in their districts. For each plant or group of plants at which there is no local resident Commanding Officer, a Plant Guard Officer will be designated by the District Plant Guard Officer. The Plant Guard Officer is the member of the Army of the United States in command of the guard force and will report direct to the District Plant Guard Officer.

179 16. At each plant where there is a local resident Commanding Officer, this officer will be the Commanding Officer having jurisdiction over the guard force. He may serve as the Plant Guard Officer himself or cause another officer to be appointed as such.

17. If a plant at which the guard has been organized as Auxiliary Military Police is removed from the Service Command Responsibility List, the Commanding General of the Service Command will determine whether such guard force will be continued as Auxiliary Military Police and trained and commanded as before, or whether its status as such will be terminated.

18. Guard forces which are to be organized will be assembled at the earliest practicable date by the plant management at the request of the plant guard officer. At this assembly the Articles of War will be read and explained to each member of the guard force

by the plant guard officer or, in his absence or unavailability, by some other competent person who is an officer of the Army or civilian officer of the Auxiliary Military Police. As certain of the Articles of War are generally inapplicable to the Auxiliary Military Police, the foregoing directive will be considered complied with if articles 2, 58, 61–64, 66, 68–74, 76, 81–83, 85, 88–90, 92–94, 96, 104, 105 are read and explained. These articles define certain offenses punishable by court martial of which persons subject to military law may be guilty.

19. The Auxiliary Military Police, immediately after the Articles of War have been read and explained, will be impressed with the fact that the Government of the United States is interested in the security of the plant and its production, as essential to the successful prosecution of the war. To this end the plant guard officer will issue and post a guard order. Guard Order No. 1 will be posted at your plant. A copy of same is attached hereto. At the time of reading the Articles of War, each member of the guard force gives the pledge of loyalty to the United States and executes the plant guard agreement.

20. If a guard refuses to sign the agreement he may (but need not) be temporarily retained with the understanding that he will be dismissed as soon as he is replaced, and in any event within a reasonable time. The signed agreement will be retained by the District Plant Guard Officer. The guard force will be considered as a civilian auxiliary to the military police when 75 percent of the guards at a given plant have signed the agreement. A certificate of membership in the Auxiliary Military Police will be issued to each member. Each plant guard who becomes a member of the Auxiliary Military Police continues as such until he is released by the War Department from his obligations. This will take place when competent military authority has approved of his dismissal or resignation or when he has been discharged without honor.

180 21. Orders and regulations for the Auxiliary Military Police will be issued in the name of the Commanding Officer having jurisdiction over the guard forces. The Chief of the Continuous Security District is the Commanding Officer of the plant guard forces in the District. At civilian operated plants such orders will be issued after plant management has indicated its concurrence by signing the guard order in the lower left hand corner.

22. The Auxiliary Military Police will continue to function as formerly; that is, as when they were employed by the plant only and were not also under the direction of the Army. However, a member of the Army of the United States will be in command at

all times. He will be in command for purposes of instruction and drilling and, in particular, to take over the command of the force if and when an emergency justifying such action occurs. Although the plant guard officers will be in command at all times they will not supplant the civilian guard officers, and unless expediency demands otherwise, the plant guard officers will exercise their authority through the guard officers established by the plant management.

23. The Auxiliary Military Police are supplementing the Army of the United States in a vital task or protecting war material and war production facilities. Attempts to intimidate them or reduce or nullify their efficiency and interfere with the performance of their mission may constitute a violation of Federal as well as state criminal laws. Any and all such incidents are to be reported by the guard members to their chiefs and a detailed report will be made to the District Plant Guard Officer relative to each such incident.

24. Basically the militarization of the plant guard forces does not change the existing systems of hiring, compensation, and dismissal except as stated in paragraph 25. All remain, primarily, a matter between the guards and plant management. Guards in the employ of a private employer may, as heretofore, be dismissed and those who were Civil Service employees in the employ of the War Department may be dismissed by the local commanding officer, in accordance with Civil Service Regulations. In neither case is a Court Martial necessary.

25. A member of the Auxiliary Military Police may not be employed, dismissed, or may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant guard force would be impaired and declines to give his approval thereto. Inasmuch as the guards are under
181 oath to the Army, the plant management may suspend a guard without pay pending approval of his dismissal by the District Plant Guard Officer and pending the termination of the guards enrollment as a member of the Auxiliary Military Police. This will usually be done on the management's recommendation unless an emergency requires the guards retention.

26. A certificate of Meritorious Conduct will be issued to each member of the Auxiliary Military Police whose services are terminated honorably. In the event of termination of services under conditions other than honorable no such Certificate will be issued. A communication may be addressed to the individual whose services have thus been terminated stating only the fact of termination and that the communication is not a Certificate of Meritorious Conduct.

27. The status of the employer in regard to the employee benefits for the guard force is not changed. For example, Social Security, Workmen's Compensation, Employer's Liability and vacation schedules remain unaffected. Employers should have a clear understanding with their insurance companies concerned.

28. A member of the Auxiliary Police must be physically fit to perform his duties properly and in an efficient manner. It is sufficient if his physical fitness satisfies the plant guard officer.

29. Each member of the Auxiliary Military Police will be properly uniformed by the plant. A complete uniform consisting of blouse or shirt, trousers and hat is not required, although the complete uniform is preferred. Obviously the uniform adopted by the plant must be worn by all members of the plant guard force.

30. Because the mission of the Auxiliary Military Police includes service in the Army, the laws of war require that the members wear distinctive insignia or marks capable of recognition at a distance. By wearing such insignia or marks, members, serving with the Army, will be recognized as legitimate troops and not deemed irregulars or guerillas. Accordingly, members of the Auxiliary Military Police in the Fifth Service Command will wear the insignia as outlined in Plant Production Data Binder letter Section V—letter 3.

31. Each member of the Auxiliary Military Police is authorized to wear a service stripe for each six months of service faithfully performed. Service stripes will be in accordance with Army Regulations. A Plant Protection Data Binder letter will be issued shortly completely describing service stripes.

182 32. Members of the Auxiliary Military Police, who are entitled thereto in their own right may wear, when in their plant guard uniform such decorations, service medals, ribbons, and badges as are authorized for wear on the United States Army service uniform.

33. For plants that have established proper plant protection proficiency and where the guard force is of adequate size, properly drilled, properly uniformed and meeting certain minimum requirements, a distinctive guidon for the Auxiliary Military Police Force at that plant will be authorized.

34. Each member of the Auxiliary Military Police must carry at all times a proper identification card completed and issued by this office. This identification card is described in Plant Protection Data Binder Letter Section V–6.

35. The Auxiliary Military Police must be armed with appropriate weapons furnished by the plant management. Training in the use of firearms and providing the ammunition therefor, are

functions of plant managements. Instruction in the use of firearms is being given by the plant guard officers as a part of the plant guard training program now being conducted.

36. The Auxiliary Military Police are agents of the Federal Government and will not be subject to any state or municipal requirement which conflicts with their war time duties. Plant Guards should not be permitted to wear or carry firearms away from the plant property, excepting when the fulfillment of their duties requires it. Also, an exception is the wearing of side arms by the plant guards to plant guard training schools or to pistol ranges where they are practicing firing revolvers.

37. In general, there will be no considerable additional advantage in deputizing the members of the Auxiliary Military Police as special policemen, sheriffs, or marshals. There will be individual cases, however, in which it will be advisable to continue the local or state official capacity. The authority of the plant guard includes power to arrest without a warrant for violation of the Sabotage Act (50, U. S. C., 101–106) or the Espionage Act (50, U. S. C., 21–32). The plant management continues to be charged with the training of its guard forces in their ordinary protective duties. In addition, the guard force must be qualified to perform its duties as set forth in paragraph 6. This includes the
185 ability to serve efficiently with the Army in any emergency situation which may arise (see paragraph 7). To this end, the Auxiliary Military Police will be trained by, or under the direction of the plant guard officer in military subjects in accordance with requirements established by the District Plant Guard Officer. The time to be devoted to such training will be determined by the plant guard officer. It will not exceed one hour per week or its equivalent except with the approval of the plant management.

38. When a member of the Auxiliary Military Police injures or kills a person while in the performance of his duties, he will be arrested and detained by the Plant Guard Officer. If a civil police official seeks to arrest him, the plant guard officer, under the authority of the 74th Article of War, may refuse to release the individual until such release is approved by the Commanding General of the Service Command. A member of the Auxiliary Military Police is entitled to the same protection as a sentinel under similar circumstances.

39. Members of the Auxiliary Military Police are eligible for the decoration "Medal of Merit" authorized by the President for award to civilians who distinguish themselves by especially meritorious conduct or by performance of outstanding services. All cases of members of the Auxiliary Military Police, who in the

opinion of the District Plant Guard Officer deserve consideration for this award will be referred through channels to the Office of the Provost Marshal General for transmission to the "Medal of Merit" Board. A full statement of facts and appropriate recommendations should be included.

40. Any case of meritorious conduct, which in the opinion of the District Plant Guard Officer does not warrant recommendation for the award of the "Medal of Merit", but which he deems deserving of official commendation will be the subject of a special order of commendation issued by the Commanding Officer having jurisdiction over the guard force. Such special orders will be issued promptly and with liberality and will be given appropriate publicity, particularly among the guard force concerned. A copy of such special order will be furnished to the employer.

184 41. Any questions concerning information given in the foregoing should be addressed directly to this office.

Yours very truly,

A. C. Rasmussen,
A. C. Rasmussen,
Lt. Col., Ord. Dept., District Chief.

Incls.: 2
CIPP 124—Guard Agreement.
CIPP 68—Guard Order #1.

185 *Respondent's Exhibit 5*

We are Permitted to Employ Only Citizens of the United States

APPLICATION FOR EMPLOYMENT

E. C. Atkins and Company

INDIANAPOLIS, INDIANA

Please Print — Draft Classification_____
Date_____ Social Security No._____
Name_____ Sex_____ Race_____
Last Name — First Name — Middle Name
Address_____ Phone_____
Number and Street — City — State
Age_____ Height: Ft_____ In_____ Weight_____ No. of Children_____
Ages_____ No. of Other Dependents_____
Relatives in Company: _____ Names and Relationship_____
Yes or No
Are You a Former Employee?_____ Date Last Employed by This Company_____
Yes or No
Why Did You Leave?_____
Check One: Married Single Widow(er) Divorced Separated

Citizen of the United States ___ Place of Birth _____
Yes or No
Date of Birth _____ If Foreign Born, State _____ Port of Entry
Date of Entry _____ Date of First Papers _____
Date of Last Papers _____ Place of Issuance Naturalization _____
How Long in U. S.? _____ How Long in City? _____
Years Years
Father's Name _____ Place of Birth _____ Citizen of U.S. _____
Yes or No
Mother's Maiden Name _____ Place of Birth _____ Citizen of U.S. _____
Yes or No

United States Military Service _____ Branch _____
Yes or No
How Discharged _____ Date _____ Are you Now a Member of Any Military or Naval Unit? _____ Have You Been to a Foreign Country in the Past 15 Years? _____
Yes or No
Yes or No

Education and Special Training:
Grade School _____ High School _____ College _____ Technical, Trade or Business _____
Years Years Years
High School _____
Years Name and Location
Course of Study _____ College _____
Name and Location
Subject Majored in _____ Do You Write or Speak Any Foreign Language? _____ If So, Which Language _____
What Is Your Hobby? _____ Do You Read Blue Prints? _____ How Well? _____

(For Married Applicants Only)

Husband's Name or Wife's Maiden Name } _____ Birthplace _____
Strike Out One—If Married Husband or Wife
Husband's or Wife's } Occupation _____ In An Emergency Notify _____
Strike Out One—If Married

186 Mark Number of Months Worked on Any of the Following:

OFFICE

Addressograph Machine
Bookkeeper, General Ledger
Bookkeeping, Machine
Clerk, Accounts Payable
Clerk, General File
Clerk, Mail
Clerk, Statistical
Comptometer
Purchasing
Secretarial
Tabulating Machine
Timekeeper
Typist Stenographer
Cost Accounting

EXPERIENCE NOT LISTED ABOVE

Welding, Arc, Steel
Welding, Aluminum
Sheet Metal, Bench
Brake, Metal
Bending and Rolling Machine
Shear, Foot
Cable Splicing
Exp. Assembly
Instrument Installation

MAINTENANCE

Blacksmith
Carpenter
Electrician
Janitor
Laborer
Millwright
Pipefitter
Welding

ENGINEERING EXPERIENCE

DRAFTING

Layout
Detailing
Checker
Tool Design
Tool Routing
Blue Print Machine

MACHINE SHOP

Milling Machine
Mill, Horizontal Boring
Mill, Thread
Profiler
Broach
Lathe, Engine
Lathe, Bench
Lathe, Automatic
Lathe, Turret
Jig Borer
Drill Press
Drill Press, Multiple Spindle
Radial Drill
Casting Layout
Screw Machine, Hand
Screw Machine, Automatic
Gear Shaper
Gear Cutter
Grinder, Internal
Grinder, Cylinder Internal
Grinder, External
Grinder, Gear
Grinder, Surface
Grinder, Centerless
Grinder, Tool
Grinder, Drill
Grinder, Cutter
Buffing and Polishing
Machinist, Bench
Machinist, All Around
Die Making
Jig Building
Tool Making
Template Making
Punch Press

MISCELLANEOUS

Electro Plating
Heat Treating
Inspection, Receiving
Inspection, Floor
Inspection, Final
Inspection, Assembly
Inspection, Tool and Gauge
Pattern Making, Wood
Pattern Making, Metal
Sand Blasting
Shipping and Receiving
Bearing Casting

EXECUTIVE EXPERIENCE

State Nature

Have You a Complete Set of Tools? Yes ___ No ___ If Not, What Tools Have You? _____

List All Past Employment, etc.: Last Employment in Space No. 1. Include Periods of Unemployment.

Name of past employers and addresses	Dates of employment				Job classification or duties	Salary or wages	Reason for leaving
	From		To				
	Mo.	Yr.	Mo.	Yr.			
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							

List Three References Not Relatives or Employees of This Company.

Name _____ Address _____ Occupation _____

Name _____ Address _____ Occupation _____

Name _____ Address _____ Occupation _____

For What Kind of Work Are You Applying? _____

Second Choice _____ Have You Any Physical Disability? —— If So, State Condition _____

187

Respondent's Exhibit 6

UNITED STATES OF AMERICA

AUXILIARY MILITARY POLICE

ARMY OF THE UNITED STATES

CERTIFICATE OF ENROLLMENT

This is to Certify that Henry Adams Johnston has been voluntarily and duly enrolled as an Auxiliary to the Military Police with the rank of _____ for service with the Army

of the United States at E. C. Atkins & Company, Indianapolis, Indiana, and is subject to Military Law for the duration of the War or until the earlier official termination by the War Department of his services as an Auxiliary to the Military Police.

For the Commanding General, Fifth Service Command:
Dated 29 June 1943.

A. C. Rasmussen,
A. C. RASMUSSEN,
Lt. Col., Ord. Dept.,
Chief, Continuous Security District Office,
Cincinnati, Ohio.

Official:
B. R. Wetenhall,
B. R. WETENHALL,
Capt., C. M. P.
District Plant Guard Officer,
Cont. Secty. Dist. Off., Cincinnati, O.

188 *Respondent's Exhibit 7*

UNITED STATES OF AMERICA

AUXILIARY MILITARY POLICE

ARMY OF THE UNITED STATES

CERTIFICATE OF MERITORIOUS CONDUCT

This is to Certify that Wilbur H. Murrell has faithfully served as an Auxiliary to the Military Police of the Army of the United States at Fall Creek Ordnance Plant, Indianapolis, Indiana, from _____, 19____, to June 1, 1943, and that his services are hereby honorably terminated.

For the Commanding General, Fifth Service Command:
Dated June 11, 1943.

A. C. RASMUSSEN.

Official:
B. R. Wetenhall,
B. R. WETENHALL,
Plant Guard Officer.

189 *Respondent's Exhibit 8*

Cincinnati Office

Aye Eldridge is hereby released from the obligations assumed upon signing agreement as a Civilian Auxiliary to the Military Police at the Fall Creek Ordance Plant, Indianapolis, Indiana.

By order of the Chief, Cincinnati District Continuous Security Branch.

20 September 1943.

B. R. Wetenhall,
B. R. WETENHALL,
Captain, C. M. P.,
District Plant Guard Officer.

190 *Respondent's Exhibit 9*

THE ARTICLES OF WAR

APPENDIX 1 TO A MANUAL FOR COURTS-MARTIAL, U. S. ARMY, 1928

191 Appendix 1

THE ARTICLES OF WAR

The articles included in this section (sec. 1, Ch. II, act of June 4, 1920, 41 Stat. 787) shall be known as the Articles of War and shall at all times and in all places govern the Armies of the United States.

I. PRELIMINARY PROVISIONS

ART. 1. Definitions.—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

(a) The word "officer" shall be construed to refer to a commissioned officer;

(b) The word "soldier" shall be construed as including a noncommissioned officer, a private, or any other enlisted man;

(c) The word "company" shall be understood as including a troop or battery; and

(d) The word "battalion" shall be understood as including a squadron.

ART. 2. Persons Subject to Military Law.—The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law," or "per-

sons subject to military law," whenever used in these articles: Provided, That nothing contained in this act, except as specifically provided in article 2, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction unless otherwise specifically provided by law.

(a) All officers, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks Quartermaster Corps, and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

(b) Cadets;

(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: Provided, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

(e) All persons under sentence adjudged by courts-martial;

192 (f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

Patients in the Army and Navy General Hospital, Hot Springs, Ark. (Act of March 3, 1909; 35 Stat. 748.)

Personnel of the Coast and Geodetic Survey transferred to the service of the War Department. (Sec. 16, act of May 22, 1917; 40 Stat. 88.)

Personnel of the Lighthouse Service transferred to the service of the War Department. (Act of August 29, 1916; 39 Stat. 602.)

Inmates of the National Home for Disabled Volunteer Soldiers. (R. S. 4835.)

Personnel of the Public Health Service detailed in time of war for duty with the Army. (J. R. No. 9, July 9, 1917; 40 Stat. 242.)

Inmates of the Soldier's Home. (R. S. 4824.)

Civilian employees, Dig. J. A. G., February 1918, p. 7; Dig. J. A. G. 1918, pp. 79, 195; Dig. J. A. G. 1919, pp. 13, 339.

Members of Red Cross, Dig. J. A. G. April–December 1917, p. 98; Dig. J. A. G. 1919, p. 96.

II. COURTS-MARTIAL

ART. 3. Courts-Martial Classified.—Courts-martial shall be of three kinds, namely:

First, general courts-martial;

Second, special courts-martial; and

Third, summary courts-martial.

A Composition

ART. 4. Who May Serve on Courts-Martial.—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial. When appointing courts-martial the appointing authority shall detail as members thereof those officers of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of the minority membership thereof.

Competency of retired officers (Dig. J. A. G., January–June 1921, p. 55); of reserve officers on active duty (Dig. J. A. G. 1924, p. 7); of National Guard officer attending service school (Dig. J. A. G. 1924, p. 7).

All volunteer officers are competent to sit from the dates of their muster or acceptance into the military service of the United States; and all other officers lawfully called, drafted, or ordered into, or to duty for training in, the military service of the United States, from the dates are required by the terms of the call, draft, or order to obey the same.

As to presumption of competency, see Dig. J. A. G. 1922, p. 118.

ART. 5. General Courts-Martial.—General courts-martial may consist of any number of officers not less than five.

ART. 6. Special Courts-Martial.—Special courts-martial may consist of any number of officers not less than three.

ART. 7. Summary Courts-Martial.—A summary court-martial shall consist of one officer.

B. By Whom Appointed

ART. 8. General Courts-Martial.—The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the
193 commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witnes for the prosecution.

The authority appointing a general court-martial shall detail as one of the members thereof a law member, who shall be an officer of the Judge Advocate General's Department, except that when an officer of that department is not available for the purpose the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe.

The order appointing a general court-martial when issued by a commander specially empowered thereto by the President need not cite the order of the President. (Dig. J. A. G. 1921, p. 56.)

ART. 9. Special Courts-Martial.—The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 10. Summary Courts-Martial.—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: Provided, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

ART. 11. Appointment of Trial Judge Advocates and Counsel.—For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel, and for each general court-martial one or more assistant trial judge advocates and one or more assistant defense counsel when necessary: Provided, however, That no officer who has acted as member, trial judge advocate, assistant trial judge advocate, defense counsel, or assistant defense counsel in any case shall subsequently act as staff judge advocate to the reviewing or confirming authority upon the same case.

C. Jurisdiction

ART. 12. General Courts-Martial.—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, and any other person who by the law of war is subject to trial by military tribunals: Provided, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy: Provided further, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service shall so re-
194 quire, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses set out in Article 13; but the limitations upon jurisdiction as to persons and upon punishing power set out in said article shall be observed.

ART. 13. Special Courts-Martial.—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles: Provided, That the President may, by regulations, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

Special courts-martial shall not have power to adjudge confinement in excess of six months, nor to adjudge forfeiture of more than two-thirds pay per month for a period of not exceeding six months.

ART. 14. Summary Courts-Martial.—Summary courts-martial shall have power to try any person subject to military law, except an officer, a member of the Army Nurse Corps, a warrant officer, an Army field clerk, a field clerk Quartermaster Corps, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: Provided, That uncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring

them to trial before a general court-martial: Provided further, That the President may, by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

Summary courts-martial shall not have power to adjudge confinement in excess of one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay.

ART. 15. Jurisdiction not Exclusive.—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war be triable by such military commissions, provost courts, or other military tribunals.

ART. 16. Officers; How Triable.—Officers shall be triable only by general and special courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank.

The provision as to rank is directory only on the appointing authority. The sentence of a court cannot be collaterally attacked by going into an inquiry whether the trial by officers inferior in rank to the accused was or was not avoidable. (See Swain v. U. S., 165 U. S. 553.)

D. Procedure

ART. 17. Trial Judge Advocate to Prosecute; Counsel to Defend.—The trial judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented in his defense before the court by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by the defense counsel duly appointed for the court pursuant to Article 11. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, of the court, shall, if the accused so desires, act as his associate counsel.

ART. 18. Challenges.—Members of a general or special court-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to one peremptory challenge; but the law member of the court shall not be challenged except for cause.

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ART. 19. Oaths.—The trial judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate and assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the trial judge advocate and to each assistant trial judge advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of a trial judge advocate, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

ART. 20. Continuances.—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

ART. 21. Refusal or Failure to Plead.—When an accused arraigned before a court-martial fails or refuses to plead, or answers foreign to the purpose, or after a plea of guilty makes a statement inconsistent with the plea, or when it appears to the court that he entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, the court shall proceed to trial and judgment as if he had pleaded not guilty.

ART. 22. Process to Obtain Witnesses.—Every trial judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its territories, and possessions.

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ART. 23. Refusal to Appear or Testify.—Every person not subject to military law who, being duly subpœnaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than $500 or imprisonment not to exceed six months, or both, at the discretion of the court: Provided, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses: Provided further, That every person not subject to military law, who before any court-martial, military tribunal, or military board, or in connection with, or in relation to any proceedings or

investigation before it or had under any of the provisions of this act, is guilty of any of the acts made punishable as offenses against public justice by any provision of chapter 6 of the act of March 4, 1909, entitled "An act to codify, revise, and amend the penal laws of the United States" (vol. 35, Stat. L. p. 1088), or any amendment thereof, shall be punished as therein provided.

ART. 24. Compulsory Self-Incrimination Prohibited.—No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him, or to answer any question not material to the issue when such answer might tend to degrade him.

ART. 25. Depositions—When Admissible.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: Provided, That testimony by deposition may be adduced for the defense in capital cases.

197 ART. 26. Depositions—Before Whom Taken.—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

ART. 27. Courts of Inquiry—Records of, When Admissible.—The record of the proceedings of a court of inquiry may, with the consent of the accused, be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

ART. 28. Certain Acts to Constitute Desertion.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein.

Any person subject to military law, who quits his organization or place of duty with the intent to avoid hazardous duty or to shirk important service shall be deemed a deserter.

ART. 29. Court to Announce Action.—Whenever the court has acquitted the accused upon all specifications and charges, the court shall at once announce such result in open court. Under such regulations as the President may prescribe the findings and sentence in other cases may be similarly announced.

ART. 30. Closed Sessions.—Whenever a general or special court-martial shall sit in closed session, the trial judge advocate and the assistant trial judge advocate, if any, shall withdraw; and when their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel, if there be any.

ART. 31. Method of Voting.—Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who will forthwith announce the result of the ballot to the members of the court. The law member of the court, if any, or if there be no law member of the court, then the president, may rule in open court upon interlocutory questions, other than challenge, arising during the proceedings: *Provided*, That unless such ruling be made by the law member of the court if any member object thereto the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That if any such ruling be made by the law member of the court upon any interlocutory question other than an objection to the admissibility of evidence offered during the trial, and any member objects to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *Provided further, however*, That the

phrase, "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but, upon all these questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members in the manner aforesaid.

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ART. 32. Contempts.—A military tribunal may punish as for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder: *Provided*, That such punishment shall in no case exceed one month's confinement, or a fine of $100, or both.

ART. 33. Records—General Courts-Martial.—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the trial judge advocate; but in case the record can not be authenticated by the president and trial judge advocate, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the president and by an assistant trial judge advocate, if there be one, in lieu of the trial judge advocate; otherwise by another member of the court.

ART. 34. Records—Special and Summary Courts-Martial.—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

ART. 35. Disposition of Records—General Courts-Martial.—The trial judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record

of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been acted upon, be transmitted to the Judge Advocate General of the Army.

ART. 36. Deposition of Records—Special and Summary Courts-Martial.—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of summary courts-martial may be destroyed.

ART. 37. Irregularities—Effect of.—The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided*, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: *Provided further*, That the omission of the words
199 "hard labor" in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments.

ART. 38. President May Prescribe Rules.—The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: Provided, That nothing contrary to or inconsistent with these articles shall be so prescribed: Provided further, That all rules made in pursuance of this article shall be laid before the Congress annually.

E. Limitations Upon Prosecutions

ART. 39. As to Time.—Except for desertion committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the ar-

raignment of such person: Provided, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment by court-martial shall be three years: Provided further, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: And provided further, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.

"Manifest impediment," as used in the eighty-eighth article (a predecessor of the present thirty-ninth Article of War) does not mean merely want of evidence, or ignorance as to the offender or offense by the military authorities, but it means something akin to absence, want of power, or a physical inability to bring the party charged to trial. A "manifest impediment" does not exist where the military authorities, by reasonable diligence could make such party amenable to justice; and any concealment of the evidence of his guilt, or other like fraud on his part by which the prosecution is delayed until the time of the bar has run does not in and of itself deprive him of the benefit of the statute (14 Op. Atty. Gen. 265).

ART. 40. As to Number.—No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the reviewing and, if there be one, the confirming authority shall have taken final action upon the case.

No authority shall return a record of trial to any court martial for reconsideration of—

(a) An acquittal; or

(b) A finding of not guilty of any specification; or

(c) A finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Article of War; or

(d) The sentence originally imposed, with a view to increasing its severity, unless such sentence is less than the mandatory sentence fixed by law for the offense or offenses upon which a conviction has been had.

200 And no court-martial in any proceedings on revision, shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is hereinbefore prohibited.

The findings of an army administrative board, or a proceeding before an investigating board, can not preclude trial by court-martial. (Dig. J. A. G. 1923, p. 99; Dig. J. A. G. 1922, p. 62.)

F. Punishments

ART. 41. Cruel and Unusual Punishments Prohibited.—Cruel and unusual punishments of every kind, including flogging, branding, marking, or tattooing on the body, are prohibited.

ART. 42. Places of Confinement—When Lawful.—Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall, under the sentence of a court-martial, be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature and so punishable by penitentiary confinement for more than one year by some statute of the United States, of general application within the continental United States, excepting section 289, Penal Code of the United States, 1910, or by the law of the District of Columbia, or by way of commutation of a death sentence, and unless, also the period of confinement authorized and adjudged by such court-martial is more than one year: Provided, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions, any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: Provided further, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: Provided further, That persons sentenced to dishonorable discharge and to confinement, not in a penitentiary, shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of War or the reviewing authority may direct, but not in a penitentiay.

ART. 43. Death Sentence—When Lawful.—No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death, except by the concurrence of all the members of said court-martial present at the time the vote is taken, and for an offense in these articles expressly made punishable by death; nor sentenced to life imprisonment, nor to confinement for more than ten years, except by the concurrence of three-fourths of all of the members present at the time the vote is taken. All other convictions and sentences, whether by general or special court-martial, may be determined by a two-thirds vote of those members present at the time the vote is taken. All other questions shall be determined by a majority vote.

ART. 44. Cowardice; Fraud—Accessory Penalty.—When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 45. Maximum Limits.—Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial the punishment shall not exceed such limit or limits as the President may from time to time prescribe: Provided, That in time of peace the period of confinement in a penitentiary shall in no case exceed the maximum period prescribed by the law which, under article 42 of these articles, permits confinement in a penitentiary, unless in addition to the offense so punishable under such law the accused shall have been convicted at the same time of one or more other offenses.

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C. Action by Appointing or Superior Authority

ART. 46. Action by Convening Authority.—Under such regulations as may be prescribed by the President every record of trial by general court-martial or military commission received by a reviewing or confirming authority shall be referred by him, before he acts thereon, to his staff judge advocate or to the Judge Advocate General. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being.

ART. 47. Powers Incident to Power to Approve.—The power to approve the sentence of a court-martial shall be held to include:

(a) The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and

(b) The power to approve or disapprove the whole or any part of the sentence.

(c) The power to remand a case for rehearing, under the provisions of article 50½.

ART. 48. Confirmation—When Required.—In addition to the approval required by article 46, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:

(a) Any sentence respecting a general officer;

(b) Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division;

(c) Any sentence extending to the suspension or dismissal of a cadet; and

(d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution, subject to the provisions of article 50½, upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division.

When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary.

The reviewing authority, who was the commanding general of the American Expeditionary Forces in Siberia, which consisted of two regiments of Infantry and some special units, directed the execution of the sentence of dismissal of an officer. The words "Army" and "Expeditionary Forces" are not synonymous. * * * Such reviewing authority was without power under A. W. 48 to confirm an order executing a sentence of dismissal of an officer. (Dig. J.A. G., 1919, p. 46.)

ART. 49. Powers Incident to Power to Confirm.—The power to confirm the sentence of a court-martial shall be held to include:

(a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when,
202 in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt; and

(b) The power to confirm or disapprove the whole or any part of the sentence.

(c) The power to remand a case for rehearing, under the provisions of article 50½.

ART. 50. Mitigation or Remission of Sentences.—The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence.

Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries

and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority, and no approved sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in the fifty-second article.

When empowered by the President so to do, the commanding general of the Army in the field or the commanding general of the territorial department or division, may approve or confirm and commute (but not approve or confirm without commuting), mitigate, or remit and then order executed as commuted, mitigated, or remitted any sentence which under these articles requires the confirmation of the President before the same may be executed.

The power of remission or mitigation shall extend to all uncollected forfeitures adjudged by sentence or court-martial.

ART. 50½. Review: Rehearing.—Judge Advocate General shall constitute, in his office, a board of review consisting of not less than three officers of the Judge Advocate General's Department.

Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President under the provisions of article 46, article 48, or article 51 is submitted to the President, such record shall be examined by the board of review. The board shall submit its opinion, in writing, to the Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President.

Except as herein provided, no authority shall order the execution of any other sentence of a general court-martial involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may upon his approval of a sentence involving dishonorable discharge or confinement in a penitentiary order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty. When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence, the

Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence. When in
203 a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or that errors of law have been committed injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his own dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty and may disapprove or vacate the sentence, in whole or in part.

When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not theretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers not members of the court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court, and no sentence in excess of or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding: *Provided*, That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial legally insufficient to support the findings or sentence or that errors of law have been committed injuriously affecting the substantial rights of the accused, unless in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing had on the order of the President, the record of trial shall, after examination by the board of review, be

transmitted by the Judge Advocate General, with the board's opinion and his recommendations, directly to the Secretary of War for the action of the President.

Every record of trial by general court-martial, examination of which by the board of review is not hereinbefore in this article provided for, shall nevertheless be examined in the Judge Advocate General's Office; and if found legally insufficient to support the findings and sentence, in whole or in part, shall be examined by the board of review, and the board, if it also finds that such record is legally insufficient to support the findings and sentence, in whole or in part, shall, in writing, submit its opinion to the Judge Advocate General, who shall transmit the record and the board's opinion, with his recommendation, directly to the Secretary of War for the action of the President. In any such case the President may approve, disapprove or vacate, in whole or in part, any findings of guilty, or confirm, mitigate, commute, remit, or vacate any sentence, in whole or in part, and direct the execution of the sentence as confirmed or modified, and he may restore the accused to all rights affected by the findings and sentence, or part thereof, held to be invalid; and the President's necessary orders to this end shall be binding upon all departments and officers of the Government.

Whenever necessary, the Judge Advocate General may constitute two or more boards of review in his office, with equal powers and duties.

Whenever the President deems such action necessary, he may direct the Judge Advocate General to establish a branch of his office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office a board of review, or more than one. Such Assistant Judge Advocate General and such board or boards of review shall be empowered to perform for that command, under the general supervision of the Judge Advocate General, the duties which the Judge Advocate General and the board or boards of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or confirmation by the President.

Accused was sentenced to dishonorable discharge, all forfeitures, and 10 years' confinement. The reviewing authority approved the sentence, but reduced the period of confinement to five years and forwarded the record of trial for review under the provisions of A. W. 50½. The board of review, the Acting Judge Advocate General concurring, held the record of trial legally sufficient to support the sentence. In publishing the general court-martial order in the case no mention was made of the reduction in the term of confinement. *Held*, That the only sentence acted upon by the board of review and the Judge Advocate General was the one as

originally approved by the reviewing authority and that the reviewing authority did not have the power to order a greater sentence into execution. (Dig. J. A. G. 1922, p. 71.).

When under this article the Board of review holds a record of trial legally insufficient to support the findings or sentence, and such holding is concurred in by the Judge Advocate General, such finding or sentence is thereby vacated and the same can not be reconsidered for the purpose of reversing such holding. (Dig. J. A. G. 1923, p. 52.)

Except where the President is the reviewing or confirming authority, it is not the function of the board of review or the Judge Advocate General, in passing upon the legal sufficiency of a record under A. W. 50½, to weigh evidence, judge of the credibility of witnesses, or determine controverted questions of fact. In such cases the law gives to the court-martial and the reviewing authority exclusively this function of weighing evidence and determining what facts are proved thereby; therefore, if the record of trial contains any evidence which, if true, is sufficient to support the findings of guilty, the board of review and the Judge Advocate General are not permitted by law, for the purpose of finding the record not legally sufficient to support the findings, to consider as established such facts as are inconsistent with the findings even though there be uncontradicted evidence of such facts. C. M. 152797.

When both the board of review and the Judge Advocate General hold the record of trial by general court-martial to be legally insufficient to support a sentence requiring confirmation by the President before its execution, the record should not be submitted to the Secretary of War for the action of the President but should be returned to the reviewing authority in accordance with the provisions of A. W. 50½ for rehearing or such other action as may be proper. (Ops. J. A. G., December 29, 1922, approved by the Secretary of War December 30, 1922, in C. M. 154185.)

When under the provisions of A. W. 50½ the Judge Advocate General advises the reviewing or confirming authority of the holding of the board of review, and his concurrence therein, he may in a separate communication, for reasons stated therein, advise such reviewing or confirming authority that he deems the sentence unnecessarily severe or that in his opinion one or more of the findings of guilty should be disapproved.

ART. 51. Suspension of Sentences of Dismissal or Death.—The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with

a copy of the record of trial, shall immediately be transmitted to the President.

205 ART. 52. Suspension of Sentences.—The authority competent to order the execution of the sentence of a court-martial may, at the time of the approval of such sentence, suspend the execution, in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension; and the Secretary of War or the commanding officer holding general court-martial jurisdiction over any such offender, may at any time thereafter, while the sentence is being served, suspend the execution, in whole or in part, of the balance of such sentence and restore the person under sentence to duty during such suspension. A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions, the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted, subject to like power of suspension. The death or honorable discharge of a person under a suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.

ART. 53. Execution or Remission—Confinement in Disciplinary Barracks.—When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War.

III. PUNITIVE ARTICLES

A. Enlistment; Muster; Returns

ART. 54. Fraudulent Enlistment.—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct.

ART. 55. Officer Making Unlawful Enlistment.—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations,

or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

ART. 56. False Muster.—Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

ART. 57. False returns—Omission to Render Returns.—Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any
206 officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct.

B. Desertion; Absence Without Leave

ART. 58. Desertion.—Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

ART. 59. Advising or Aiding Another to Desert.—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

ART. 60. Entertaining a Deserter.—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct.

ART. 61. Absence Without Leave.—Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper

leave, or absents himself from his command, guard, quarters, station, or camp without proper leave shall be punished as a court-martial may direct.

C. Disrespect; Insubordination; Mutiny

ART. 62. Disrespect Toward the President, Vice President, Congress, Secretary of War, Governors, Legislatures.—Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct.

ART. 63. Disrespect Toward Superior Officer.—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct.

ART. 64. Assaulting or Willfully Disobeying Superior Officer.—Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.

ART. 65. Insubordinate Conduct Toward Noncommissioned Officer.—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a warrant officer or a noncommissioned officer while in the execution of his office, or uses threatening or insulting language or behaves in an insubordinate or disrespectful manner toward a warrant officer or a noncommissioned officer while in the execution of his office, shall be punished as a court-martial may direct.

207 ART. 66. Mutiny or Sedition.—Any person subject to military law who attempts to creat' or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court martial may direct.

ART. 67 Failure to Sup'ress Mutiny or Sedition.—Any Officer, or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or, knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other punishment as a court martial may direct.

ART. 68. Quarrels; Frays; Disorders.—All officers, members of the Army Nurse Corps, warrant officers, Army field clerks Quartermaster Corps, and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer, nurse, band leader, warrant officer, field clerk, or noncommissioned officer or draws a weapon upon or otherwise threatens or does violence to him, shall be punished as a court martial may direct.

D. ARREST; CONFINEMENT

ART. 69. Arrest or Confinement.—Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this article, shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court martial may direct.

ART. 70. Charges; Action Upon.—Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

No charge will be referred for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are

forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.

[308] Before directing the trial of any charge by general court-martial the appointing authority will refer it to his staff judge advocate for consideration and advice.

When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay in investigating or carrying the case to a final conclusion shall be punished as a court-martial may direct. When a person is held for a trial by general court-martial, the commanding officer will, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had; and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. In time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

ART. 71. Refusal to Receive and Keep Prisoners.—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct.

ART. 72. Report of Prisoners Received.—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

ART. 73. Releasing Prisoner Without Proper Authority.—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 74. Delivery of Offenders to Civil Authorities.—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities or to aid officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction shall be
209 held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

See Dig. J. A. G. 1912, pp. 134–136.

"When any civil official of the State of * * * attempts to arrest any person subject to military law upon the military reservation at fort * * *, the person whose arrest is sought must inform the civil official that he is required to make the arrest through the post commander and that the person whose arrest is sought cannot otherwise submit. If, after this, the civil official persists, the arrest will be prevented unless the procedure indicated under the 74th Article of War is followed." The foregoing instruction by a corps area commander was held subject to no objection. (See Dig. J. A. G. 1925, p. 1.)

E. War Offenses

ART. 75. Misbehavior Before the Enemy.—Any officer or soldier who, before the enemy, misbehaves himself, runs away, or shamefully abandons or delivers up or by any misconduct, disobedience, or neglect endangers the safety of any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or

quarters, shall suffer death or such other punishment as a court-martial may direct.

ART. 76. Subordinates Compelling Commander to Surrender.—Any person subject to military law who compels or attempts to compel any commander of any garrison, fort, post, camp, guard, or other command, to give it up to the enemy or to abandon it shall be punishable with death or such other punishment as a court-martial may direct.

ART. 77. Improper Use of Countersign.—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct.

ART. 78. Forcing a Safeguard.—Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

ART. 79. Captured Property to be Secured for Public Service.—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct.

ART. 80. Dealing in Captured or Abandoned Property.—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties.

ART. 81. Relieving, Corresponding With, or Aiding the Enemy.—Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or
210 gives intelligence to the enemy, either directly or indirectly, shall suffer death or such other punishment as a court-martial or military commission may direct.

ART. 82. Spies.—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United

States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death.

A person apprehended upon United States territory not under martial law, who had not entered any camp, fortification, or other military premises of the United States and who had not come through the fighting lines or field of military operations, cannot be tried as a spy by a military tribunal, and to such a case section 1343 of the Revised Statutes and A. W. 82 cannot constitutionally be applied. (31 Ops. Atty. Gen. 356.) (Dig. J. A. G. 1921, p. 31.)

F. Miscellaneous Crimes and Offenses

ART. 83. Military Property—Willful or Negligent Loss, Damage or Wrongful Disposition.—Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct.

ART. 84. Waste or Unlawful Disposition of Military Property Issued to Soldiers.—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct.

ART. 85. Drunk on Duty.—Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to military law, except an officer, who is found drunk on duty, shall be punished as a court-martial may direct.

ART. 86. Misbehavior of Sentinel.—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct.

ART. 87. Personal Interest in Sale of Provisions.—Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessaries of life brought into such garrison, fort, barracks, camp, or other place for the

use of troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

ART. 88. Intimidation of Persons Bringing Provisions.—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessaries to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct.

ART. 89. Good Order to be Maintained and Wrongs Redressed.—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or wilfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot, shall be punished as a court-martial may direct.

Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article 105, shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

ART. 90. Provoking Speeches or Gestures.—No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct.

ART. 91. Dueling.—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.

ART. 92. Murder—Rape.—Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.

ART. 93. Various Crimes.—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, embezzlement, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court-martial may direct.

ART. 94. Frauds Against the Government.—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into an agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures, or advises the making of, an oath to any fact or to any writing or other paper knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or in-
212 tended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition; clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same:

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person being guilty of any of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty, while in the military service of the United States, of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property intrusted to his charge by an enlisted man of men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls.

The provision of this article that any person guilty of an offense thereunder while in the military service is subject to arrest and trial by court-martial therefor after his discharge will not be held unconstitutional by a court of the first instance, in view of the fact that it has been in effect and enforced for sixty years. (Ex parte Joly, 290 Fed. 858.) (Dig. J. A. G. 1923, p. 99.)

ART. 95. Conduct Unbecoming an Officer and Gentleman.—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

Offenses under A. W. 95 and A. W. 96 are not the same, nor established by the same evidence, the former being applicable to officers and cadets; and the conviction of an officer under both articles on the same facts held not illegal as placing him twice in jeopardy for the same offense. (McRae v. Henkes, 278 Fed. 108.) (Dig. J. A. G. 1922, p. 118.)

ART. 96. General Article.—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the direction of such court.

ART. 97. When and by Whom Ordered.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.

ART. 98. Composition.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

ART. 99. Challenge.—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available.

ART. 100. Oath of Members and Recorders.—The recorder of a court of inquiry shall administer to the members the following oath: "You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

ART. 101. Powers; Procedure.—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the trial judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

ART. 102. Opinion of Merits of Case.—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

ART. 103. Record of Proceedings—How Authenticated.—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

V. MISCELLANEOUS PROVISIONS

ART. 104. Disciplinary Powers of Commanding Officers.—Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges
214 for not exceeding one week, extra fatigue for not exceeding one week, restriction to certain specified limits for not exceeding one week, and hard labor without confinement for not exceeding one week, but shall not include forfeiture of pay or confinement under guard; except that in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade may, under the provisions of this article, also impose upon an officer of his command below the grade of a major a forfeiture of not more than one-half of such officer's monthly pay for one month. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

ART. 105. Injuries to Property—Redress of.—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such com-

plaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board.

Civilian employees of the Army within the territorial jurisdiction of the United States in time of peace are not "persons subject to military control" within the meaning of A. W. 2 and A. W. 105 and the stoppage of their pay to reimburse owners of private property for damages due to the fault or negligence of such civilian employees is not authorized. (8 Comp. Gen. 999.) (Dig. J. A. G. 1924, p. 38.)

A municipal corporation is, for civil purposes, deemed a "person" (United States v. Amedy, 11 Wheat. 392, 412) and is so considered within the meaning of A. W. 105. (Dig. J. A.G. 1919, p. 172.)

Insurance company has no right of subrogation. (Dig. J. A. G. 1922, p. 4.).

ART. 166. Arrest of Deserters by Civil Officials.—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

215 ART. 107. Soldiers to Make Good Time Lost.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States, or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the

trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

ART. 108. Soldiers—Separation From the Service.—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 109. Oath of Enlistment.—At the time of his enlistment every soldier shall take the following oath or affirmation: "I, ——, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and Articles of War." This oath or affirmation may be taken before any officer.

ART. 110. Certain Articles to be Read and Explained.—Articles 1, 2, and 29, 54 to 96, inclusive, and 104 to 109, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States.

ART. 111. Copy of Record of Trial.—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial.

ART. 112. Effects of Deceased Persons—Disposition of.—In case of the death of any person subject to military law the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters; and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects, and said sum-

mary court shall have authority to collect and receive any debts due decedent's estate by local debtors and to pay the undisputed local creditors of decedent in so far as any money belonging to the deceased which may come into said summary court's possession under this article will permit, taking receipts therefor for file with said court's final report upon its transactions to the War Department; and as soon as practicable after the collection of such effects said summary court shall transmit such effects and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to the son, daughter, father, provided the father has not abandoned the support
216 of his family, mother, brother, sister, or the next of kin in the order named, if such be found by said court, or the beneficiary named in the will of the deceased, if such be found by said court, and said court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to or readily ascertainable by said court, and the said court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of deceased except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valued chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions, to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of accounts of deceased officers and enlisted men of the Army.

The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment.

ART. 113. Inquests.—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances

attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

ART. 114. Authority to Administer Oaths.—Any judge advocate or acting judge advocate, the president of a general or special court-martial, any summary court-martial, the trial judge advocate or any assistant trial judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law.

An assistant adjutant has no authority as such to administer oaths. (Dig. J. A. G. 1919, p. 135.)

ART. 15. Appointment of Reporters and Interpreters.—Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission.

ART. 116. Powers of Assistant Trial Judge Advocate and of Assistant Defense Counsel.—An assistant trial judge advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the trial judge advocate of the court. An assistant defense counsel shall be competent likewise to perform any duty devolved by law, regulation, or the custom of the service upon counsel for the accused.

ART. 117. Removal of Civil Suits.—When any civil or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under

any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section 33 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause.

ART. 118. Officers, Separation From Service.—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction.

This article does not apply to warrant officers. (Dig. J. A. G., 1922, p. 49.)

ART. 119. Rank and Precedence Among Regulars, Militia, and Volunteers.—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade.

ART. 120. Command When Different Corps or Commands Happen to Join.—When different corps or commands of the military forces of the United States happen to join or do duty together, the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States, or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President.

ART. 121. Complaints of Wrongs.—Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general

shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as
218 possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

SEC. 2. That the provisions of Chapter II of this act shall take effect and be in force eight months after the approval of this act: *Provided*, That articles 2, 23, and 45 shall take effect immediately.

SEC. 3. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of Chapter II of this act, under any law embraced in or modified, changed, or repealed by Chapter II of this act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this act had not been passed.

SEC. 4. That section 1342 of the Revised Statutes of the United States be, and the same is hereby, repealed, and all laws and parts of laws insofar as they are inconsistent with this act are hereby repealed.

219 *Respondent's Exhibit 10*

WAR DEPARTMENT

CONTINUOUS SECURITY DISTRICT OFFICE

904 Enquirer Building

CINCINNATI, OHIO

10 MAY 1943.

GUARD ORDER No. 1

To Auxiliary Military Police of This Plant:

1. Pursuant to the orders of the War Department, the guard forces at this plant were activated as Auxiliary Military Police, and for military purposes will be commanded, drilled, and instructed as military units.

2. All members of the guard force are subject to the Articles of War and may be court-martialed or otherwise punished for violations thereof.

3. A commissioned officer of the Army of the United States has been placed in command. Although in command at all times, this officer has not superseded the civilian guard officers and normally will exercise direct control only in matters relating to military instruction and duties as Auxiliary Military Police.

4. The mission of this guard force is to provide protection for this plant. In addition to its normal function, the force or any member thereof, whether on or off duty, is available for military use in any emergency, whether it be the result of flood, fire, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. *No conflicting*

interest of any kind will be permitted to interfere with the successful accomplishment of this mission.

5. The Government of the United States regards the protection of this plant and its production as essential in the successful prosecution of the war. The Auxiliary Military Police are ordered to provide this necessary protection and to ward off danger or threat of danger of any kind and from any source. If force must be used to accomplish this result, it will be used only to the extent reasonably necessary.

6. No member of the Auxiliary Military Police may resign without the written approval of the District Plant Guard Officer. Inattention to duty, failure to attend required instruction periods, and conduct unbecoming to the service may be cause for dismissal and the denial of a Certificate of Meritorious conduct.

For the Commanding Officer:

B. R. Wetenhall,
B. R. WETENHALL,
Captain, C. M. P.,
District Plant Guard Officer.

Approved:
(Signed)_____
Name in Type.
Title.
Plant.

220 *Respondent's Exhibit 11*

WAR DEPARTMENT
CONTINUOUS SECURITY DISTRICT OFFICE
904 Enquirer Building
CINCINNATI, OHIO

11 MAY 1943.

GUARD ORDER
No. 2

1. General Orders.—General Orders are those orders which apply to all posts. All Auxiliary Military Police members of plant guard forces are required to thoroughly understand the following listed General Orders.

2. When directed by proper authority to recite his General Orders a member of the Auxiliary Military Police replies substantially as follows:

My General Orders are:

(1) To take charge of this post and all plant and government property in view.

(2) To walk my post in a military manner, keeping always on the alert and observing everything that takes place within sight or hearing.

(3) To report all violations of orders I am instructed to enforce.

(4) To repeat all calls from posts more distant from the guardhouse than my own.

(5) To quit my post only when properly relieved.

(6) To receive, obey, and pass on to the guard who relieves me all orders from the plant official in charge of the Plant Guard Force, the Chief and non-commissioned officers of the guard.

(7) To talk to no one except in the line of duty.

(8) To give the alarm in case of fire or disorder.

(9) To call the Chief of the Guard in any case not covered by instructions.

(10) To salute all officers and all colors and standards not cased.

(11) To be especially watchful at night and during the time for challenging to challenge all persons on or near my post, and to allow no one to pass without proper authority.

(12) To allow no one to commit a nuisance on or near my post.

(13) To allow no one to enter upon plant property without proper authority.

(14) To detain all persons attempting to take photographs or make maps or sketches of the plant property without proper authority.

(15) To give no information concerning the plant or its business to anyone.

(16) To give first aid where necessary, and to direct injured persons, who can walk, to aid stations.

(17) To assist authorized persons to locate an area or gate or office to which they have been directed by proper authority.

(18) To allow no one to loiter on or near my post or the plant premises, and to detain all suspicious persons and call the Chief of the Guard.

By order of the Commanding Officer:

B. R. Wetenhall,
B. R. WETENHALL,
Capt., C. M. P.,
District Plant Guard Officer.

Approved:
(Signed) _____
Type Name.
Title.
Plant.

221 *Respondent's Exhibit 12*

All communications should be accompanied by carbon copy and addressed to

WAR DEPARTMENT
CONTINUOUS SECURITY DISTRICT OFFICE
904 Enquirer Building
CINCINNATI, OHIO

13 MAY 1943.

GUARD ORDER
No. 3

To All Auxiliary Military Police:

1. Each member of the Auxiliary Military Police is authorized to wear a service stripe for each six (6) months of service faithfully performed.

2. Service will begin with the date that the plant guard was inducted into the Auxiliary Military Police.

3. The service stripe will be in accordance with Army Regulations and will conform in material and color to the chevrons authorized to be worn by the Auxiliary Military Police in the Fifth Service Command.

4. The service stripe will not be furnished at government expense.

For the Commanding Officer:

B. R. Wetenhall;
B. R. WETENHALL;
Capt., CMP.
District Plant Guard Officer.

Approved:
(Signed) HAROLD R. SCHUMAN.
Type Name.
Title.
Plant.

Respondent's Exhibit 13

FM 21-100

WAR DEPARTMENT

BASIC FIELD MANUAL

SOLDIER'S HANDBOOK

July 23, 1941—Including C1, May 1, 1942

180. While you are off duty do not remove your clothing or equipment or leave the immediate vicinity of the guardhouse without permission of the commander of the guard. An emergency may occur when you will be needed at once.

181. When you are not posted as a sentinel or on other duty which requires you to carry your rifle, keep it in the arms rack in the guardhouse or in a stack.

182. Orders for sentinels are of two classes: general orders and special orders. General orders apply to all sentinels. Special orders apply to particular posts and duties. You must know and be able to recite the general orders before you go on guard duty. As soon as you are assigned to a relief and a particular post you must learn and be able to recite the special orders for that post. Whenever the officer of the day or the commander of the guard considers that a sentinel does not have sufficient instruction or is otherwise unfit for guard duty, he relieves him, sends him back to his organization, and notifies his organization commander.

183. The following are the general orders all sentinels are required to memorize. Learn them as soon as you can.

My general orders are—

1. To take charge of this post and all Government property in view.

2. To walk my post in a military manner, keeping always on the alert and observing everything that takes place within sight or hearing.

3. To report all violations of orders I am instructed to enforce.

4. To repeat all calls from posts more distant from the guard than my own.

5. To quit my post only when properly relieved.

6. To receive, obey, and pass on to the sentinel who relieves me all orders from the commanding officer, officer of the day, and officers and noncommissioned officers of the guard only.

7. To talk to no one except in line of duty.

8. To give the alarm in case of fire or disorder.

9. To call the corporal of the guard in any case not covered by instructions.

10. To salute all officers and all colors and standards not cased.

11. To be especially watchful at night and, during the time for challenging, to challenge all persons on or near my post, and to allow no one to pass without proper authority.

12. Guard duty is one of your most important duties. Remember that when you are posted as a sentinel you represent the commanding officer whose orders you are required to enforce, on and in the vicinity of your post. Upon the manner in which you perform your duties depends not only the enforcement of military law and orders, but also the security of persons and property under your charge. In time of war your responsibility as a member of the guard is greater than ever, for then the safety of your organization depends upon the manner in which you watch while your comrades rest. This is so important that sleeping on post by a sentinel or other improper performances of duty is punishable by a very severe court-martial sentence.

223

Respondent's Exhibit 14

This Identifies

Name Badge No.

AS AN EMPLOYEE OF

E. C. ATKINS AND COMPANY

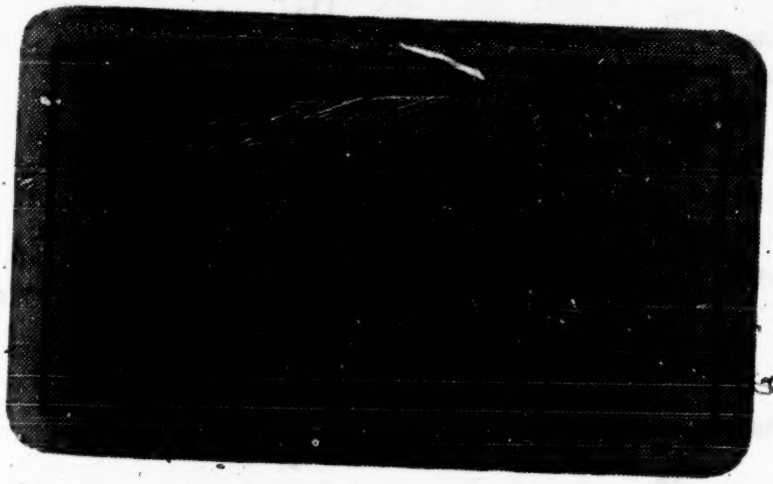
INDIANAPOLIS, INDIANA

Personnel Director

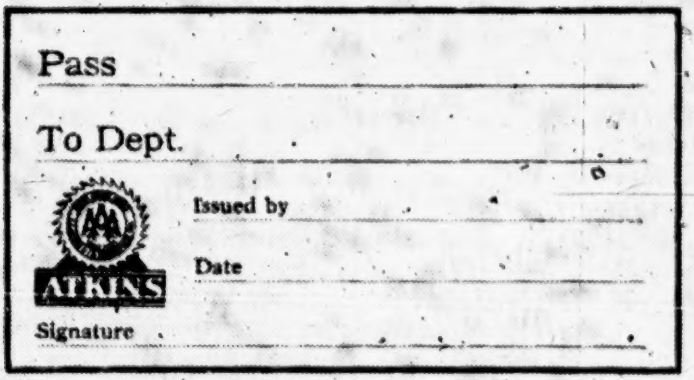
This Card Must Be Surrendered Upon Termination of Employment.

224

Respondent's Exhibit 15



225 *Respondent's Exhibit 16*



226 *Respondent's Exhibit 17*

COLLECTIVE BARGAINING AGREEMENT EXECUTED BY AND BETWEEN E. C. ATKINS AND COMPANY AND UNITED STEELWORKERS OF AMERICAN, LOCAL NO. 1543, AFFILIATED WITH THE C. I. O.

This Agreement, Dated and effective June 14, 1943, but actually executed June 14, 1943, by and between E. C. Atkins and Company, an Indiana corporation (hereinafter referred to as the "Employer"), Party of the First Part, and United Steelworkers of America, Local No. 1543, Affiliated with the C. I. O. (hereinafter referred to as the "Union"), Party of the Second Part, witnesseth that:

Whereas, the Employer and the Union have negotiated the terms and conditions of a Collective Bargaining Agreement, and desire to reduce the same to writing:

Now, therefore, the parties hereto enter into the following Articles of Agreement:

Section 1—Bargaining Unit, Reorganization and Co-Operation

(a) Bargaining Unit. It is hereby agreed that the unit appropriate for the purposes of collective bargaining, pursuant to the provisions of Section 9 (b) of the National Labor Relations
227 Act, is the unit consisting of all persons employed in the plants, shops, or yards of the Employer, except foremen and other supervisory officials, timekeepers and checkers, plant protection employees, journeymen sawsmiths, apprentice saw-

smiths, and brake press operators, painters, carpenters, and confidential salaried employees, including the South Illinois Street Plant and Fall Creek Ordnance Plant at Indianapolis, Indiana, and the Portland, Oregon, and Seattle, Washington, Plants, as established by the Decision and Direction of Election of the National Labor Relations Board, entered March 10, 1943, in a certain proceeding entitled "In the Matter of E. C. ATKINS & COMPANY and United Steelworkers of America, Local 1543, Affiliated with the C. I. O.," being Case No. R-4820, upon the docket of such Board, as affected and amended by supplements to such Decision entered March —, 1943 and April 15, 1943, such unit being hereinafter referred to as the "Appropriate Bargaining Unit." The term "employee," as used in this Agreement, shall include each and every member of the Appropriate Bargaining Unit.

(b) Designation of Union.—The collective bargaining negotiations between the Union and the Employer resulting in the negotiation and execution of this Collective Bargaining Agreement are conducted pursuant to the Decision of the National Labor Relations Board, as amended and supplemented, hereinabove referred to.

(c) Recognition.—The Employer hereby recognizes the Union as the Exclusive collective bargaining agency for all members of the Appropriate Bargaining Unit in respect to rates of pay, wages, hours of employment, or other conditions of employment; provided that any employee in such Appropriate Bargaining Unit shall have the right at any time to present grievances to the Employer. The Union and its Negotiating Committee, in conducting the negotiations resulting in the execution of this Collective Bargaining Agreement, hereby represent and warrant to the Employer that they have acted, and are acting, pursuant to the authority conferred as the exclusive collective bargaining agency for and in behalf of all members of the Appropriate Bargaining Unit, and with the intent that all members of the Appropriate Bargaining Unit shall be bounded by all the terms of this Collective Bargaining Agreement.

(d) Cooperation.—It is the intent and purpose of the parties to this Agreement to promote and improve industrial and economic relationships between the employees and the Employer, and to set forth herein the basic agreement governing rates of pay, wages, hours of employment, or other conditions of employment.

229 Section 2—Union Shop

All employees eligible shall become members of the Union within thirty (30) days after employment. The Employer shall have the exclusive right to determine the source or sources of applicants for employment, and shall be the sole judge of the requirements and qualifications of such applicants.

Section 3—Unfair Practices

(a) Covenant of the Employer.—The Employer agrees that it will comply with all provisions of the National Labor Relations Act, as amended from time to time, and will not engage in any one or more of the following Unfair Labor Practices listed in Section 8, clauses (1) to (5), both inclusive, of the National Labor Relations Act:

(i) Interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of the Union, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

(ii) Dominate or interfere with the formation or administration of the Union, or any other organization of employees, or contribute financial or other support to it; provided that, subject to rules and regulations made and published by the National Labor Relations Board, the Employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay.

230 (iii) Discriminate in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in the Union, or any other organization of employees.

(iv) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the National Labor Relations Act.

(v) Refuse to bargain collectively with the Union; or lock out the employees; unless all the procedure relating to the settlement of grievances contained in Section 9 of this Agreement shall first have been followed, and the final decision pursuant to such procedure shall be against the Union. This clause of this Collective Bargaining Agreement is of the essence of the Agreement.

(b) Covenant of the Employees.—The Union agrees that no employees in the Appropriate Bargaining Unit will engage in any one or more of the following Unfair Labor Practices:

(i) Intimidate, restrain, or coerce employees, into membership in the Union.

(ii) Solicit employees, who are not eligible for membership in the Union during the working hours, either of the soliciting or solicited employee, or on the Employer's time.

(iii) Strike, walk out, picket, boycott, or take other individual or collective action to terminate the employment of the employees or any thereof, or to violate any of the terms of this Agreement, unless all the procedure relating to "Adjustment of Grievances" contained in Section 9 of this Agreement shall first have been followed, and the final decision pursuant to such procedure shall be against the Employer. This clause of this Collective Bargaining Agreement is of the essence of the Agreement.

231 Section 4—Wages

(a) The minimum hourly wage rate for employees of ninety (90) days or more seniority shall be 75¢ per hour.

The following minimum schedule shall be used for employees with ninety (90) days or less seniority:

New employees	65¢
Employees with thirty (30) days or more seniority	67½¢
Employees with sixty (60) days or more seniority	70¢
Employees with ninety (90) days or more seniority	75¢

(b) After thirty (30) days, new employees showing ability can qualify for actual operator's scale.

(c) The Union shall be informed of any individual change of wage rates at the following Committee meeting.

(d) Apprentices (newly hired) will draw 52½¢ per hour with a 2½¢ minimum increase per hour every six (6) months. Apprentices will receive as a bonus a $25.00 tool allowance at the end of each year served. Rates of apprentices now employed receiving less than this scale shall be adjusted accordingly.

(e) The eight-hour night shift that starts at 3:00 p. m. in the saw plant and 4:00 p. m. in the Armor Plate, shall be paid a 5% bonus on earnings. The eight-hour night shift that starts at 11:00 p. m. in the Saw plant and 12:00 p. m. in the Armor Plate shall be paid at 10% bonus on earnings. Swing shifts shall be paid at the 5% rate for work done before 11:00 p. m. or 12:00 p. m. as above, and at 10% rate for work done after 11:00 p. m. or 12:00 p. m. as above.

(f) In cases of break-down of machinery, employees shall be paid for all time lost in excess of thirty minutes at their regular rate of earnings.

(g) When piece-work jobs are timed, the operator shall receive his regular rate of earnings plus until the morning following the day checker receives rate sheet and operator is notified of same.

(h) All provisions of this Section 4 of this Agreement effecting an increase in wages shall be subject to approval by the National War Labor Board before becoming effective or being enforceable by either party hereto.

Section 5—Hours of Work

The work day shall consist of eight hours, and the work week shall be forty hours. Time and one-half shall be paid for all overtime in excess of eight hours in any one day or forty hours in any one week. All Sunday and holiday work shall be paid for at double time. No employee shall be paid for both daily and weekly overtime for the same hours so worked. Work on Saturday shall be paid for at the rate of time and one-half.

The calendar work day shall consist of a twenty-four hour period beginning at 7:00 a. m. in the old plant.

233 The calendar work day shall consist of a twenty-four hour period starting at 8:00 A. M. in the Armor Plate Division.

For the duration of the war, straight time shall be paid for work done on Sundays and holidays if they fall within the forty-hour week. Work in excess of forty hours will be paid for at time and one-half, and double time will be paid for any seventh consecutive day.

Section 6—Vacations

Employees who prior to July 1, 1942, have a cumulative service of from one to five years, inclusive, shall receive one week's vacation with pay in advance. Employees with six years' service shall receive one week and one day; employees with seven years' service, one week and two days; employees with eight years' service, one week and three days; employees with nine years' service, one week and four days; employees with ten years' service, one week and five days or two weeks' vacation. Such vacations to be taken in a single period.

Pay for vacation shall be based on average rate of earnings per hour of base period of first three months' quarter of the year. The total hours of such pay shall be the average hours worked per week during the period of two weeks ending one week
234 previous to vacations but not less than forty (40) hours per week of vacations.

Section 7—Seniority

It is understood that in all cases of promotion, increase or decrease of forces, length of cumulative service shall govern, provided the employee has the ability to perform the work to which he is transferred or is familiar with the job in question. If pro-

duction decreases occur affecting departmental or individual employment, such notice shall be given the affected party or parties one week in advance of any lay-off procedure. Notification of such action shall also be supplied the Grievance Committee.

Former employees where service was less than six (6) months, who for any reasons have not been on the pay roll for one year prior to reemployment, shall return to work as new employees.

Cases of disputes involving ability shall be considered only when there is a difference of three months or less of seniority.

Seniority of all new employees shall be established after six months' service and will revert back to date of employment.

A plant seniority list will be supplied the Grievance Committee. A department seniority list will be supplied the foreman and steward of each department. These seniority lists will be revised quarterly.

Section 8—War Clauses

In case employees are drafted or volunteer for military service, the Employer agrees to retain employment for those so called to the service of their Country without interruption of seniority. Men employed in their places during their absence shall be replaced by returning service men—provided they are physically able to resume work.

Employees entering military service after the first of the year, who have one year or more actual service when called, shall be eligible for vacation pay and draw same when leaving for service.

Section 9—Adjustment of Grievances

In event any difference, disagreement, or dispute (hereinafter referred to as a "grievance") arises as to the interpretation, application or performance of this Agreement by the Employer, or the rights of the Union, or any employee thereunder, the employees agree to take none of the action prohibited by the terms of Section 3, clause (b), subclause (v) of this Agreement, unless an earnest effort has been made to settle such grievance in the following manner:

First, between the aggrieved employee and the foreman of the department involved;

Second, between a member or members of the Grievance Committee, designated by the Union, and the Personnel Director;

Third, between a member or members of the Grievance Committee, designated by the Union, and the General Superintendent or Manager of the Plant:

Fourth, between the representatives of the National Organization of the Union and Representatives of the Employer;

Fifth, in the event the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Employer and the Union.

"Grievances will be discussed by the Personnel Director with the Grievance Committee weekly on Wednesday at 4:00 P. M.; provided that in any case the Personnel Director shall have at least 72 hours' time after the filing of a statement of grievance to investigate the facts connected therewith prior to the discussion of such grievance with the Grievance Committee."

All cases presented by the Grievance Committee shall be reported back by the Employer within seven (7) days; the Union agrees not to present more than four major time study cases at any one Grievance Committee-Management weekly conference.

The Grievance Committee for the plant shall consist of not less than three employees of the Plant, and not more than ten such employees designated by the Union, who will be afforded such time off, without pay as may be required.

First, to attend regularly scheduled committee meetings;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting; and

Third, any member of the Grievance Committee or officer of the Union shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Union, after notice to and permission from his department supervisor or foreman.

The actual number of members of the Grievance Committee at the plant shall be mutually agreed upon between the General Superintendent or Manager of the plant and the Union, and in no case shall there be more than one member from any department.

The aggrieved employee, witness or foreman may be called into a Grievance meeting upon request of the Grievance Committee by mutual agreement between the Employer and the Grievance Committee.

Any decision reached with the Management shall stand until the Grievance Committee is recalled to reconsider any case altered by circumstances.

Section 10—Management

The Management of the plant and the direction of working forces, including the right to hire, suspend or discharge, for

proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons is vested exclusively in the Employer.

Section 11—Discharge Cases

In the event that a member of the Union shall be discharged from Employment from and after the date hereof, and he believes that he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the discharge, the Employer shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five days from date of discharge. In exceptional cases, longer time shall be granted.

Section 12—Safety and Health

The employer shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to protect properly employees from injury shall be provided by the Employer in accordance with the practice now prevailing. Proper heating and ventilating systems shall be installed where needed.

Section 13—Individual Wage Rates

Where alleged inequalities in wage rates prevail the matter may be taken up for local plant adjustment and settlement made between the Union and Management on a mutually satisfactory basis.

Section 14—Holidays

The following days shall be considered holidays during which days there shall be no regular production work, except in cases of continuous operations: New Years Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving, Christmas.

Section 15—Reporting Pay

Employees will be notified at the close of the day or night shift whether or not they will work the following day. If not, and the employee reports for work, he or she will be paid for three hours' work at least at his or her average rate of pay, unless he refuses such work as may be provided.

Section 16—Lay-offs and Bulletin Boards

When it is necessary to reduce forces, seniority shall be adhered to except in special cases agreed upon by the Employer and the Union. Before laying off employees with one year or more seniority the workweek shall be reduced to thirty-two (32) hours.

Three bulletin boards will be provided for the exclusive use of the Union for posting notices of official business.

240 Section 17—Protective Seniority

Beginning July 1, 1942, all elective representatives of the Union shall not be laid off during term of offices.

Section 18—Termination Provisions and Future Conferences

The agreement shall remain in full force and effect unless changed or terminated in accordance with provisions hereinafter stated. Either party may, subsequent to the date of this Agreement, at any time or from time to time, given ten days' written notice, by registered mail, to the other party of the time for commencement of a conference of the parties for the purpose of negotiating the terms and conditions of changes of this Agreement, which conferences shall be at the office of the Company in Indianapolis, Indiana, unless otherwise mutually agreed; and if, because of failure to agree, this Agreement is not changed by written agreement entered into between the Company and the Union within thirty (30) days from the giving of said notice, then this Agreement and all provisions thereof shall terminate upon the expiration of thirty (30) days from the giving of said notice.

This contract covers the same personnel classifications employed at Portland, Oregon, and Seattle, Washington, except Sawsmiths which are included and covered by terms of this Agreement.

241 Section 19—Assigns to Be Bound

During the period of this agreement, as extended from time to time, it shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

Section 20—Warranty of Union

The Union hereby warrants that it represents a majority of the employees of the Employer in the Appropriate Bargaining Unit, and that such majority is, at the time of the execution of this Agreement, composed of members in good standing of the Union.

Executed the day and year hereinabove first mentioned by the parties hereto.

E. C. Atkins and Company, by Henry C. Atkins, Jr., Gen.
242 Supt., "Employer," Party of the First Part; United Steelworkers of America, Local No. 1545, Affiliated With the C. I. O., by Harry O. Dougherty, President; by B. Lee Fischer, by Emerson Baker, by George Church, by John R. Bradshaw, by B. B. Chambers, by Fred G. Reeves, by Norman Ruby, by Louis Jones, by Philip Murray, President, N. S. A.; by David J. McDonald, Secretary-Treasurer, U. S. A.; by James Robb, Director, District No. 30, U. S. A., "Union," Party of the Second Part.

243 *Respondent's Exhibit 18*

AGREEMENT

SECTION 1. This agreement entered into this first (1) day of July 1940 by and between E. C. Atkins & Co., hereinafter referred to as the Employer, and Saw Smiths' Local Union No. 18548, known as Anvil Men, affiliated with the American Federation of Labor, hereinafter referred to as the Union, representing all Employees in Indianapolis who are Anvil Men.

SECTION 2. The Employer agrees to employ only Saw Smiths in good standing with the Union, and the Union agrees to furnish the Employer with a sufficient number of competent workers (if available) whenever called upon to do so. This Union Recognized as Federal Labor Union No. 18548 reserves the right to accept or reject any journeymen anvil man. In case of rejection this Union can reserve the right not to work with him.

SECTION 3. One Dollar ($1.00) an hour shall constitute the minimum rate of wages for any one hour's day work or piece work. Where existing wage rates are paid the Employe in excess of the scale herein provided, said scale shall remain at the highest rate and nothing herein contained shall be construed to permit reduction in such higher rate of pay.

SECTION 4. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work, with time and one-half for all time worked in excess of these hours. All work done on Saturday shall be considered overtime. Double time for all work done on Sunday and all legal holidays.

SECTION 5. Each apprentice now working shall be required to serve four (4) years on the anvil at day work, and in no way will he be considered a journeyman until he has completed his specified four (4) years. He shall at no time be given preference over a journeyman. There shall be no apprentices put on the anvil during the life of this contract.

SECTION 6. There shall be no discrimination against age or ability. In event there is, it shall be referred to the grievance committee.

SECTION 7. Each anvil man, after having served one (1) year of accumulated service with E. C. Atkins & Co., shall receive one week's vacation with pay.

244 SECTION 8. This Agreement shall be and remain in full force and effect from this date until one (1) year from date of signing of this contract, and shall continue in effect annually thereafter unless thirty (30) days' notice in writing is submitted prior to the expiration of this agreement of any desire to change or amend same. It is agreed, however, that this contract may be opened at the request of the Union thirty days after the signing of this agreement for the question of wages.

E. C. ATKINS AND COMPANY,
HENRY C. ATKINS, JR., *Supt.*

SAW SMITH'S FEDERAL LABOR UNION, No. 18548,
CHAS. SHARPE, JR., *President.*
EDDIE VESPO, *Secretary.*
HENRY H. LOTT, *Treasurer.*
AMERICAN FEDERATION OF LABOR,
HUGH GORMLEY,
Gen. Representative.

245. *Respondent's Exhibit 19*

ADDENDUM TO AGREEMENT ENTERED INTO ON JULY 1ST, 1940, BETWEEN E. C. ATKINS AND COMPANY AND THE SAWSMITHS' LOCAL UNION NO. 18548

This instrument shall be entitled an "Addendum to Agreement" and shall be considered to be, and is, a part of the agreement entered into on July 1st, 1940, between E. C. Atkins and Company and the Sawsmiths' Local Union No. 18548.

Whereas, each and all of the members of the Union stand ready and willing to do their share, and their all, to work, including long hours, to aid, assist and cooperate with the E. C. Atkins and Company to the end that it may satisfactorily, efficiently and timely do its alloted task in National Defense; and

Now, therefore, it is hereby mutually agreed by and between the Union and the Employer, that:

SECTION I. The Union agrees to the training and use of Break. Press Operators during the present emergency war period.

SECTION II. Said men will be under the jurisdiction of the Sawsmiths' Local Union No. 18548, and said Union will issue work permits to those so employed. The Union and Company will de-

termine the rate of pay at a later date. The Company agrees not to use said break press operators on anvil, slab, rolls or as journeymen sawsmiths.

SECTION III. The Company further agrees that when sawmakers are not working forty-eight (48) hours per week in the saw and armor plate production said sawsmiths shall work on presses in place of permit men; this in accordance with seniority as agreed to by Union and employer.

SECTION IV. This Company agrees that not less than nine (9) sawsmiths shall be retained in the Armor Plate Division at all times. If any change desired, this will be taken up between the Company and the Union.

SECTION V. Break press operators shall not be put on production work until sawsmiths who are able are working forty-eight (48) hours per week.

SECTION VI. The Company agrees to the following plan: That all journeymen sawsmiths who have one (1) to five (5) years' service, inclusive, as of July 1st, 1942, shall receive one (1) week paid vacation; sawsmiths having six (6) years' service, one week and one day paid vacation; sawsmiths having seven (7) years' service, one week and two days' paid vacation; sawsmiths having eight (8) years' service, shall receive one week and three days' paid vacation; sawsmiths having nine (9) years' service shall receive one week and four days' paid vacation; sawsmiths having ten (10) years' service or over, shall receive two weeks' paid vacation.

Vacations will so far as possible be granted at times most desired by employees, providing it does not interfere with efficient operation of their department.

SECTION VII. The Company agrees that effective August 24, the rate of pay for journeymen sawsmiths shall be One Dollar and Sixty Five Cents ($1.65) per hour and that all bonus and piece work shall be eliminated.

The Union agrees that if the above rate of pay is installed the present individual production shall be maintained. The Management to be the judge of satisfactory performance.

In witness whereof, the parties hereunto subscribed their names this 11 day of September 1942.

E. C. ATKINS AND COMPANY,
By HENRY C. ATKINS, JR.,
General Superintendent.

AMERICAN FEDERATION OF LABOR,
By HUGH GORMLEY,
General Representative.

SAWSMITHS LOCAL UNION NO. 18548,
By CHARLES SCHAEFER, JR.

247 *Respondent's Exhibit 20*

ADDENDUM TO AGREEMENT ENTERED INTO ON JULY 1ST, 1940 BETWEEN E. C. ATKINS AND COMPANY AND THE SAWSMITH'S LOCAL UNION NO. 18548

Memo Agreement—March 5, 1942

It is hereby agreed between E. C. Atkins and Company and the Sawsmith's Local Union No. 18548, that beginning as of this date the following will take place:

The Company will agree to take the equivalent of one Sawmaker from each department to be put on the Break Presses in addition to the Sawmakers now working on these Break Presses.

It is agreed that this trial period will consist of 30 days, but that if at any time during the 30 days, it is definitely shown that the Sawmakers cannot maintain and keep up with production, then the Sawmakers will agree to see that help is hired according to agreement by the Company as provided in the agreement dated July 1st, 1940.

In witness whereof, the parties have hereunto subscribed their names this 5th day of March 1942.

AMERICAN FEDERATION OF LABOR,
By HUGH GORMLEY, *General Representative.*
SAWSMITH'S LOCAL UNION NO. 18548,
By CHAS. SCHAEFER.
E. C. ATKINS AND COMPANY,
By HENRY G. ATKINS, JR.
U. S. DEPARTMENT OF LABOR,
By OWEN SIMMONS, JR.

218 *Respondent's Exhibit 21*

THIS IDENTIFIES

Cyrus Elvin Wood — NAME

Personnel — BADGE NO.

AS AN EMPLOYEE OF

E. C. ATKINS AND COMPANY

INDIANAPOLIS, INDIANA

FALLCREEK ORDNANCE PLANT

Cyrus E. Wood

PERSONNEL DIRECTOR

This Card Must Be Surrendered Upon Termination of Employment

DATE EMPLOYED October 6, 1[illegible]

AGE	WEIGHT	HEIGHT	EYES	HAIR
51	195	6'	Bl	Grey

FINGERPRINT LEFT. INDEX

FINGERPRINT RIGHT INDEX

249 *Respondent's Exhibit 22*

NATIONAL DEFENSE PROGRAM

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

APPLICANT

Name of contributor _____ City _____ State _____
(State whether Police Department, Sheriff's Office, or other official designation)

(Please paste photo here)
(Use optional)

Applicant for _____
(Specify position)

Name of company _____
Date _____
Address _____
Birthplace _____ Citizenship _____
Age _____ Date of birth _____
Height _____ Weight _____
Hair _____ Eyes _____
Complexion _____ Build _____
Scars and marks _____

IMPORTANT—PLEASE INCLUDE ALL REQUESTED DATA

250 NATIONAL DEFENSE PROGRAM

Leave this space blank

Name _____ Classification _____
(Surname) (First) (Middle)

(Please Type or Print Plainly)

No. _____ Color _____ Sex _____ Reference _____

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger.

LEFT HAND

6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

Impressions taken by: _____ Note amputations

(Signature of official taking prints)

Date impressions taken _____ (Applicant's signature)

Four fingers taken simultaneously			Four fingers taken simultaneously
Left hand	Left thumb	Right thumb	Right hand

PLEASE DO NOT FOLD THIS CARD

251 *Respondent's Exhibit 23.*

INDIANAPOLIS POLICE DEPARTMENT FOR PERSONAL IDENTIFICATION OF APPLICANT

Name of contributor _____ City _____ State _____

(State whether Police Department, Sheriff's Office, or other official designation)

(Please paste photo here)
(Use optional)

Applicant for _____
(Specify position)

Name of company _____

Date _____

Address _____

Birthplace _____ Citizenship _____

Age _____ Date of birth _____

Height _____ Weight _____

Hair _____ Eyes _____

Complexion _____ Build _____

Scars and marks _____

IMPORTANT—PLEASE INCLUDE ALL REQUESTED DATA

252

Leave this space blank

Name _____ Classification _____
(Surname) (First) (Middle)

(Please Type or Print Plainly)

No. _____ Color _____ Sex _____ Reference _____

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger

LEFT HAND

6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

Impressions taken by: (Signature of official taking prints)	Note amputations		(Applicant's signature)
Date impressions taken			
Four fingers taken simultaneously			Four fingers taken simultaneously
Left hand	Left thumb	Right thumb	Right hand

PLEASE DO NOT FOLD THIS CARD

253 *Petitioner's Exhibit 1*

CONSTITUTION OF THE GRAND LODGE, DISTRICT AND LOCAL LODGES

International Association of Machinists

Amended by Referendum Vote, July, 1934, effective October 1, 1934. Amended by Referendum Vote, July, 1935, effective October 1, 1935. Revised by Committee on Law as recommended by the Nineteenth Convention of the International Association of Machinists, held in the City of Milwaukee, Wis., September 21 to October 2, 1936, and thereafter adopted by Referendum Vote in the month of December, 1936, effective April 1, 1937. Revised by Committee on Law as recommended by the Twentieth Convention, held in the City of Cleveland, Ohio, September 16 to September 27, 1940, and thereafter adopted by referendum vote in the month of December, 1940, effective April 1, 1941. Amended by referendum vote, January, 1942, effective April 1, 1942. (See page 100.)

INTERNATIONAL ASSOCIATION OF MACHINISTS

Machinists' Building

WASHINGTON, D. C.

254 Constitution of the Grand Lodge, District and Local Lodges of the International Association of Machinists, amended by referendum vote July, 1934; effective October 1, 1934; amended by referendum vote July, 1935; effective October 1, 1935. Revised by committee on law as recommended by the nineteenth convention of the International Association of Machinists, held in the city of Milwaukee, Wis., September 21 to October 2, 1936, and thereafter adopted by referendum vote in the month of December, 1936; effective April 1, 1937. Revised by committee on law as recommended by the twentieth convention, held in the city of Cleveland, Ohio, September 16 to September 27, 1940, and thereafter adopted by referendum vote in the month of December, 1940, effective April 1, 1941. Amended by referendum vote, January, 1942, effective April 1, 1942. (See page 100.)

ORDER OF BUSINESS OF GRAND LODGE

1. Report of Committee on Credentials.
2. Roll call of members.
3. Reading of the Minutes.
4. Report of Officers, commencing with I. P.
5. Reports and petitions of Local Unions.
6. Reports of special committees.
7. Receiving communications and bills.
8. Unfinished business.
9. New business.
10. Good and welfare.

255 PREAMBLE

Believing that the right of those who toil to enjoy to the full extent the wealth created by their labor is a natural right and realizing that under the changing industrial conditions incident to the enormous growth of syndicates and other aggregations of capital it is impossible for those who toil to obtain the full reward of their labor other than through united action; and recognizing the fact that those who toil should use their rights of citizenship intelligently, through organizations founded upon the class struggle and acting along co-operative, economic and political lines, using the natural resources, means of production and distribution for the benefit of all the people, with the view of restoring the commonwealth to all those performing useful service to society;

Now, therefore; we, the International Association of Machinists, pledge ourselves to labor unitedly in behalf of the principles herein set forth, to perpetuate our Association on the basis of solidarity and justice, to expound its objects, to labor for the general adoption of its principles, to consistently endeavor to bring about a higher standard of living among the toiling masses.

256 PLATFORM

The Grand Lodge of The International Association of Machinists aims:

1. To bring within the organization all employees, male and female, who are actively engaged in or connected with the Machinists trade, to foster in their hearts the spirit of mutual helpfulness, and to impress them with their obligation to do their best for the welfare of each member and for the Association as a whole.

2. To adopt and put into active operation an effective plan to stabilize employment for all the members of our Association.

3. To secure the establishment of a legal apprenticeship system of four (4) years.

4. To impress upon all employers the necessity of paying the full current wages weekly, giving preference in employment to members of organized labor, and abolishing personal record, physical examination, and old-age limits imposed by employers.

5. To settle all disputes arising between our members and employers, by direct negotiation whenever possible, and in cases where Arbitration is resorted to, to reserve our freedom to accept or reject the decision rendered except in those cases where it is previously agreed by both parties that the decision shall be binding.

6. To shorten the hours of Labor to thirty per week, namely five days of six hours per day; Saturday to be a holiday. To establish the principle of paid vacations, and extra pay for night work and to maintain for our members a cultural standard of living guaranteed by an adequate annual income.

7. To adopt and advocate a plan of cooperation with other kindred crafts, thereby eliminating strikes of one organization at a time, and by concerted action making it possible for all to reap the full benefit of their labor.

8. To stimulate the political education of the members to understand their political rights and use the ballot intelligently, to the end that the Government may be a government for, of, and by the people, and not to be used as a tool to further the ends of combinations of capital for its own aggrandizement.

9. To urge the membership to vote only for and support candidates who are in favor of this platform and the following political demands: Initiative, Referendum and Recall, National Income Tax Law, National Inheritance Tax Law, National and State Employers' Liability Law; all judges, without exception, to be elected

by vote of the people; national law granting pensions for old age or total disability and accident benefits; public ownership of all public utilities; woman suffrage; change of the Constitution of the United States or any country under our jurisdiction which now declares these subjects or questions to be unconstitutional; self-government of cities; abolition of contract system on all public work—city, county, state, or national—such work to be done on the day-labor plan at union wages.

257 10. That no inferior Federal judge shall set aside a law of Congress on the ground that it is unconstitutional. That if the Supreme Court assumes to decide any law of Congress unconstitutional or by interpretation undertakes to assert a public policy at variance with the statutory declaration of Congress, which alone under our system is authorized to determine the public policies of government, the Congress may by repassing the law nullify the action of the court. Thereafter the law to remain in full force and effect precisely the same as though the court had never held it to be unconstitutional.

11. The labor of a human being not being property, we demand the abolition of the use of injunctions in labor disputes on the grounds that it is a judicial usurpation of the constitutional rights of our citizens.

258 JURISDICTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

The Jurisdiction of the International Association of Machinists includes any person who has served an apprenticeship of four years at the machinist trade, or who has acquired a fundamental knowledge of shaping, sizing, turning, boring, fitting, riveting, the operating of electric, thermit and oxy-actylene welding apparatus and the adjusting of metal parts of machinery of any character, whether such metal be steel, iron, brass, lead, copper, aluminum, duralumin, bronze, or any other substitute used therefor; as well as any person who may have worked at the trade four years either as a vice hand, lathe hand, planer hand, slotting machine hand, shaper hand, milling machine hand, horizontal or vertical boring mill hand, screw machine hand, operators of Gisholt, Jones and Lamson and all other turret lathes, and gear cutters and all other machine tools. Floor hands, machine adjusters, millwrights or general erectors of machinery, jig, die, tool and mold makers, metal pattern makers, Diesel Oil and Electric machinists. The operating of electric, gas and other mechanical cranes and conveyors used in connection with machinists' work. Mechanical chauffeurs who are required to make repairs to their equipment. Sewing and knitting machine adjusters and adjusters of all kinds of automatic, semiautomatic, and self-contained machinery. Fitting together and installing valves of all kinds and flange work on high pressure piping. Automobile, aircraft and moving picture machinery builders, and repairmen.

Classification of Work Included

The making, erecting, assembling, installing, maintaining, repairing or dismantling of all or any parts thereof of all machinery, engines, motors, pumps, Diesel, and all other metal power devices, either transmission, excavating, elevating, shooting or conveying; whether driven by hand, foot, steam, electricity, gas, gasoline, naptha, benzol, oil, air, water or other power, including all metal appurtenances therto, composed of steel or iron, whether structural, angle, T, boiler, galvanized, ornamental, cast malleable, bar, tube, pipe, rod, shafting, sheet or plate; or of nickel, bronze, tin, lead, copper, brass, aluminum, babbitt or other metal substitute therefor.

The manufacture and installation of all machine tools. The operation of all machines used in the manufacture of machine-finished metal parts and devices and all bench and vice work pertaining thereto, and all machinists' work on steam, gas, gasoline, naptha, benzol, oil, air, and water-tight work.

All riveting, caulking, cutting, chipping, patching, grinding, turning, sizing, boring, fitting, laying out, shaping and drilling pertaining to machinists' work. All drilling, cutting and tapping in boilers, tanks, drums, frames or other structures required for engine and machinery attachments, mountings, or other metal construction and installation.

All oxy-acetylene, electric, oil or thermit welding when used to substitute the former method of performing new or repair work, including dismantling. All lubricating devices, injectors, and inspirators and parts thereof, and attachments thereto. All devices used in the transmission of power except electric wiring, this to include all line and countershafting, shaft hangars, sheaves and pulleys.

All instrument, gauge tool and die making, metal mold, novelty, model and metal pattern making and die sinking; the making of jigs, templets, spiral and coil springs, and all molds for the shaping of glassware.

The manufacture and installation of all printing, paper and pulp-making machinery. The manufacture and installation of all brewery machinery, including all soakers, pasteurizers, bottle washers, crowning machines, bottle-filling devices and conveyors. The manufacture and installation of all factory, mill and laundry machinery.

The manufacture and repair of all counting, recording, and correspondence devices, such as cash registers, typewriters, adding machines, sealing and addressing devices and all other office machinery.

The manufacture, repairing and maintaining of all automobiles, trucks, busses, tractors, firearms, fire engines, locomotives, hydroplanes and aeroplanes, agricultural machinery and mining machinery, rock drills and pneumatic devices used as hand tools

or for the transmission of power. The manufacture and installation of all ice making and refrigerating machinery. The manufacture and installation of all abattoir, bakery and confectionary machinery, textile, carding and gin machinery, refining machinery, and machinery used in reducing plants, rock-crushing and quarry machinery, concrete mixers and cement mill machinery, rolling mill and steel converting machinery, loading and unloading machinery and traveling roadways.

The manufacture, installation, repairing and maintaining of all machines used in making malt, cans, nails, pottery, horseshoes, brick, shoes, hats, clothing, pianos, organs, musical and surgical instruments, tobacco, cigarettes and cigars, flour, cereals and all other products, where mechanical devices are necessary for the making.

The manufacture and installation of all automatic stokers, all mechanical devices used in amusement parks, all dredging machinery, and all hoists, elevators, lower-atoms, escalators, derricks and other lifting or hoisting devices.

The inspection of all machinery, ordnance, and engines, including locomotives, and the operating of all power machinery during the period of control or until accepted by the purchaser.

The manufacture, installation, repair and maintenance of all air conditioning plants and equipment.

And all work connected with dynamometer cars, and building, repairing, setting up, inspecting and maintaining of all classes of scales.

The operation and repairing of towing and coaling machinery in the Panama Canal Zone.

Marine Work

All marine work as follows:

The installing, assembling, dismantling and repairing of all engines, pumps, dynamos, refrigerating machinery, steering gear, winches, windlasses, capstans or other devices used in handling the ship.

The removing and replacing of the rudder, propeller shaft and propeller wheel and the placing of all deck fittings and mast fittings, including mast headlights.

The installing and repairing of all condensers, evaporators, feed-water heaters, overhauling and repairing of
261 all valves, either steam, water, air, gas, oil, or other liquids and strainers attached to hull.

The installation of all pipes, pipe hangers, valves, and fittings for engines, boilers, ice machines, evaporator plants, telemotors, air compressors, and power pumps.

The instalaltion of deck operating gear for all valves.

The boring, facing, chasing or tapping and drilling holes for bolts of all pipe flanges.

The bending, threading, and installing of tubes in boilers in which threaded tubes are used.

The bending, welding, and installation of heater coils used for fuel oil tanks, or heating purposes.

The installation of all condenser and feed-water heater tubes, whether rolled, screwed, or ferruled.

The installation of all tubes in oil heaters and coolers, except those under jurisdiction of the coppersmiths.

The instalaltion of all gratings, ladders and hand rails, port lights, ventilator operating gear and watertight doors.

Electric and Internal Combustion Engines and Cars

The building, installation, inspection, adjusting, maintaining, removal and overhauling of pantographs and trolley poles shall be machinists' work, including the building of pantograph shoes and replacement of same whether the pantograph is on or off locomotive and the changing of insulated support brackets, lathe and other machine work.

The assembling, installing, inspecting, maintaining, removing and overhauling of all parts of the main and braking controllers with the exception of insulating materials, leads and wires.

The removing, dismantling, overhauling, assembling, installing, inspecting and maintaining of all air cylinders, magnet valves, cam shafts, bearings, rollers, castings, adjustment springs and metal housings used in the construction and operation of reverser switches, series parallel switches, transfer switches, group switches and contractors.

The assembling, installing, inspecting and maintaining of all mechanical parts of main and auxiliary switches and ground switches.

262 The assembling, installing, maintaining, inspecting, and overhauling of clutch and gear assembly on motor operated rheostats.

The assembling, installing, inspecting, maintaining, dismantling and overhauling of traction motors, blower motors, heater motors, rheostat motors, air compressor motors, motor generator sets, axle genegators, control generators and slip rings (excluding field coils, insulators and electrical connections); the assembling, finishing either by hand or bench work, drilling, tapping, and bolting of pole pieces: the dismantling, repairing and assembling of brush holders; the drilling, tapping and repairing of brush holder studs; the fitting of all metal parts of commutators, including segments; the turning and machine slotting of all commutators whether done in lathe or in armature housing; the pressing in and out of armature shafts; the machining, repairing and fitting of armature cores; the repairing and fitting of all covers for motors, housings and compartments.

The installing, inspecting, adjusting, removing and repairing of air compressor governors.

The grinding, filing and repairing of grids and the installing and removal of grid banks, with the exception of making and breaking electrical connections.

The removing and installing of electric cab heaters and the removal and application of covers to same where they are retained by cap screws or tap bolts; the removing and installing of headlight cages; the removing, repairing, installing and maintaining of electro-pneumatic pantograph valves, sander valves, regenerative interlock valves and automatic control switches with the exception of electric contacts and wiring, shall be machinists' work.

Removing and applying headlight, lamp and flagstaff brackets and supports, eave guards and hand rails.

Side rods, main rod, knuckle and driving pin work. Driving brake and spring rigging work. Fitting up and repairs to driving and truck boxes, including replacing of brasses.

Examination, repairing and aligning jack shafts. Refitting jack shaft collars and jack shaft casings. Repairing and maintaining air brake equipment and air compressors.

Drilling driving and truck wheels by use of ratchets or portable motors for hub liners. Applying driving and truck wheel hub liners. Driving and truck wheel tire work. Drilling, reaming and tapping holes in cabs and frames for bolts and parts.

Turning and dressing journals, and all frame and truck work, including stripping and rebuilding.

Removing and replacing main motors, including gears and bearings, and shifting gears.

Machinists' work in connection with raising cab, running out and replacing trucks and lowering cab.

Mallet coupler device between units.

Removing and replacing circulating pump and motor, except pipefitters and electrical work.

Removing, repairing and replacing work in connection with water rheostats, hand pumps and lubricators.

Examining, removing, repairing and replacing bearings.

Installing and relocating braces, stay rods, oil guards, hand brakes, air ducts, sand boxes and bellows under cab.

Whistle and bell work.

Installing and maintaining machinists' work in connection with turbine engines, motors, pumps and auxiliaries in powerhouse.

Repairs to air hammers, air motors, vise, floor and drop pit work, as well as the handling of work generally recognized as machinists' work.

Removing and replacing phase converters.

Machinists' work in connection with dismantling of phase converters, such as removal of bolts, parts, bearing caps, bearings and clamps.

Machinists' work in connection with assembling phase converters, including detail parts.

Lathe and other machinists' work in connection with construction of pantographs.

And all other work on these engines, cars and machines now covered in the general classification in our Constitution.

All of the foregoing, and in addition thereto any other work which does now, or in the future may, as industries develop, fall naturally within the scope of the jurisdiction of The International Association of Machinists, shall constitute work coming under its jurisdiction, and shall be performed by members of the aforesaid organization.

264 CONSTITUTION OF THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

ARTICLE I

Name and Location

SECTION 1. This organization shall be known by the title and name of "The Grand Lodge of the International Association of Machinists," and its principal office and headquarters shall be permanently located in the city of Washington, D. C.

Membership and Jurisdiction

SEC. 2. The Grand Lodge of The International Association of Machinists shall consist of an Executive Council (including the International President and General Secretary-Treasurer) and the representatives of local lodges who are duly elected, qualified, and seated as delegates in the quadrennial and special conventions provided for in Article X of this Constitution. It shall have power to grant charters for the purpose of organizing, supervising, controlling, and generally directing district and local lodges in any State, territory, or dependency of the United States of America, Newfoundland and the Dominion of Canada.

Government

SEC. 3. The government and superintendence of all district and local lodges shall be vested in this Grand Lodge as the supreme head of all such lodges under its jurisdiction. To it shall belong the authority to determine the customs and usages in regard to all matters relating to the craft.

Government Between Conventions

SEC. 4. Between conventions all Executive and Judicial Powers of the Grand Lodge shall be vested in the Executive
265 Council, which shall be composed of the International President, the General Secretary-Treasurer, and 7 General Vice-Presidents.

ARTICLE II

Grand Lodge Officers and How Chosen

Officers

SECTION 1. The officers of the Grand Lodge of the International Association of Machinists shall be an International President, a General Secretary-Treasurer, seven (7) General Vice-Presidents, one of whom shall be from Canada, and an Editor of the Machinists' Monthly Journal.

Three (3) delegates to the American Federation of Labor; delegates to the Trades and Labor Congress of Canada and five (5) members of the Committee on Law shall be elected concurrently with the Officers of the Grand Lodge, and in addition thereto two (2) delegates to the American Federation of Labor shall be appointed by the International President. These delegates and committeemen shall not be considered as Grand Lodge Officers.

Qualifications

SEC. 2. Candidates for office in the Grand Lodge, delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada, and the Committee on Law must be members who have been in continuous good standing for at least five years immediately prior to their nomination and free from delinquencies of any nature to the Grand Lodge or any district or local lodge of The International Association of Machinists. Such candidates must be working at the trade at the time and for one year next preceding their nomination. Salaried officers or employees of the Grand Lodge, district lodges, local lodges, and The American Federation of Labor are excepted from this provision, provided such employment and other employment at the trade, separately or jointly, has been continuous during the twelve months next preceding their nomination. The qualification "working at
266 the trade at the time and for one year next preceding their nomination," shall not be required of or apply to members of this Association who have been unable to obtain employment as a result of a strike, lockout, discrimination, or temporary physical disability.

Endorsement for Nomination

SEC. 3. On the 1st day of January, 1929, and on the 1st day of January of every fourth year thereafter, the General Secretary-Treasurer shall issue a circular to all local lodges calling for endorsements of nominees for all Grand Lodge officers, three delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada and members of the Committee on Law, which circular shall be accompanied by proper blanks or forms for the return of endorsements for nomination by local lodges.

After the receipt of said circular, and at the last regular meeting in the month of January—of which meeting notice shall be served upon members by shop bulletin, mail or otherwise—local lodges may, by a majority vote of those voting, endorse one candidate for each elective office, delegation and committee, and on or before 12 o'clock midnight January 31st the recording secretary of each local lodge shall forward to the General Secretary-Treasurer by registered mail a correct list of all endorsements for nominations and the office for which the individual is endorsed, together with his lodge and card number, upon the blanks or forms provided therefor by the General Secretary-Treasurer.

Filing and Publication of Endorsement

SEC. 4. All such endorsements for nominations for Grand Lodge officers, delegates and committees must be on file in the office of the General Secretary-Treasurer by 12 o'clock noon on February 8th; and the General Secretary-Treasurer shall thereafter tabulate the same and cause the full and complete tabulation to be published in the next issue of the Journal showing the local lodges making the endorsements, the individuals endorsed, the office for which the individual is endorsed, and designating the individuals who are thereby chosen as nominees under the provisions of Section 5 of this Article.

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Number of Nominees

SEC. 5. From the endorsements received from local lodges, there shall be selected for each elective position the two candidates receiving the highest number of endorsements, and the two so selected shall constitute the candidates on the final ballot.

Pledge to Accept Nomination

SEC. 6. On or before February 12th, the General Secretary-Treasurer shall, by registered letter, notify all candidates who have received the endorsement of ten (10) different local lodges, of that fact; and each candidate so notified shall, within ten days after receipt of notification, inform the General Secretary-Treas-

urer by registered mail of his acceptance or declination of the endorsements for nomination, together with a statement that he is duly qualified under the provisions of this Constituion, which statement shall be certified by the financial secretary of the local lodge of which the candidate is a member. On failure of any candidate to comply with this provision, it shall be the duty of the General Secretary-Treasurer to strike his name from the list, and to at once notify the candidate or candidates receiving the next greatest number of endorsements of any declination that has been received or of the failure of any candidate to accept.

Preparation and Description of Ballots

SEC. 7. After the foregoing provisions have been complied with, the General Secretary-Treasurer shall, not later than 12 o'clock noon, March 15, prepare the ballot and have printed thereon the names of all eligible candidates, together with the number of lodges of which they are, respectively, members, said names to be arranged in order according to the number of endorsements received by each candidate for the office stated. All ballots shall bear the seal of the Grand Lodge, and be so arranged that a voter may with ease designate his choice by marking a cross (X) opposite the names of those for whom he wishes to record his vote. Whenever two or more are to be elected to the same office, committee or
268 delegation, a failure to vote for the required number of candidates therefor shall invalidate the vote as to such office, committee or delegation. Ballots shall be perforated so that the name, address, lodge and card number of member voting may be detached.

Both the ballot and the perforated detachable stub, shall contain a corresponding serial number.

The General Secretary-Treasurer shall supply all lodges, free of cost, with a sufficient number of such ballots on or before the first day of April, and no other ballots shall be used. He shall furnish tally sheets in duplicate, upon which shall be tabulated the votes of the members of the lodge. One tally sheet shall be retained by the Recording Secretary of the local lodge and one shall be returned to the General Secretary-Treasurer.

Place of Voting

SEC. 8. The election of officers of the Grand Lodge, Committee on Law, delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada, or other bodies with which this Association is, or may be affiliated, shall be held on the first regular meeting of each local lodge, in the month of April, in the lodge room where the regular lodge meetings are held, and upon no other day or in any other place. Members temporarily

absent from the city may vote as provided by Section 10 of this Article.

Qualification to Vote

SEC. 9. Only members of local lodges and individuals affiliated with the Grand Lodge as provided for under Article XX of this Constitution, who are in good standing and free from delinquency of any nature to the Grand Lodge, district or local lodges shall be allowed to vote at any election.

Notification—Absent Members

SEC. 10. All members shall be notified by mail or shop bulletin of such election, and ballots shall be mailed to members who reside in outlying districts more than fifteen (15) miles from the 269 city limits of the city in which the lodge is located, and to members temporarily absent from the city. Such ballots must be returned to the Local Lodge within the time specified for receiving votes under Section 12 of this Article.

Inspectors of Election

SEC. 11. At the last regular meeting in the month of March, of each four-year period following March, 1929, each local lodge shall elect three members as inspectors of election who shall receive, record and count the vote of the members of their local lodge. In case one or more of said inspectors are unable to act, then the president of said local lodge shall fill the vacancy by appointment.

Time and Method of Voting

SEC. 12. Votes shall be received by the inspectors of election from the opening to the closing of the local lodge at the first regular meeting, which meeting must be held not later than the fourteenth of the month, and at no other meeting, in the month of April. Provision must be made to accommodate members who are working nights, and in order that all may have an opportunity to record their vote, the regular lodge meeting during which the vote is to be taken, may be convened as early as 8 A. M. All ballots must be marked in ink or pencil. All votes shall be deposited in the presence of at least two of the inspectors. Each voter shall write his name, lodge and card number in the space provided upon the perforated register slip attached to the ballot provided for that purpose. The inspectors shall require each voter to present his due book for inspection and shall mark the same in order to show that the member has voted. No member shall be allowed to fill out the ballot for any other member. Any member who, after due trial, is found guilty of illegal voting or in any other way preventing an honest election shall be liable to a fine or expulsion.

The General Secretary-Treasurer shall forward a ballot by mail to the last known address of each individual who hold a membership in direct affiliation with the Grand Lodge under the provisions of Sec. 1 of Article XX of this Constitution. Such affiliated
270 members may vote by marking their respective ballots as though voting in a local lodge and shall return their marked ballots to the General Secretary-Treasurer within the time limits prescribed for local lodges. The General Secretary-Treasurer shall count the votes of all such affiliated members and report the same in the detailed statement required under Section 14 of this Article.

Tabulation of Returns and Care of Ballots

SEC. 13. The inspectors of election of each local lodge, with such assistance as the lodge may deem necessary, shall upon the close of the polls, proceed to count the vote cast, tabulate the results in duplicate on the tally sheets furnished by the Grand Lodge, and, within seventy-two (72) hours from the close of the polls, forward one copy thereof, together with all ballots cast, to the Grand Lodge Election Tellers, in care of the General Secretary-Treasurer, by registered mail. The ballots and tally sheets shall be mailed in special containers or envelopes, to be furnished by the General Secretary-Treasurer, and plainly marked to designate their contents. These packages and envelopes shall only be opened in the presence of the three Grand Lodge Election Tellers. Ballots and tally sheets not mailed within seventy-two (72) hours after the close of the polls shall not be counted. The duplicate copy of the tally sheets shall be placed in the hands of the Recording Secretary of the Local to be spread upon the records of the lodge. The perforated register slips containing the name, address, lodge and card number of each member voting, shall be retained by the local lodge for a period of ninety days and shall be surrendered to the Grand Lodge Election Tellers if required and ordered by them.

Representation at Count

SEC. 14. Each nominee for President shall on or before the first day of May select a member of the Association, residing within 250 miles of the Grand Lodge Headquarters, to act as his teller. In the event that there is only one nominee for President, then the two candidates for General Secretary-Treasurer shall select the tellers. In the event that there is only one nominee each
271 for the offices of President and General Secretary-Treasurer, then the two candidates for Editor of the Journal shall select the tellers. The spirit of this section is to be construed that the opposing candidates shall have the right to select the tellers in rotation and where a candidate is unopposed he shall not have the right to select a teller.

The two tellers thus selected shall employ as a third teller a certified public accountant from the District of Columbia, who shall act as chairman of the Grand Lodge Election Tellers. The two Grand Lodge Election Tellers chosen by candidates shall, while engaged in counting and supervising the Grand Lodge election returns, receive as compensation $10 per day, with railroad fare, and actual hotel expenses, if residing outside the city of Washington.

Counting the Votes

SEC. 15. The General Secretary-Treasurer shall be custodian of all ballots and tally sheets and he shall, after the Grand Lodge Election Tellers are duly organized and on their demand, surrender unopened and in their original containers all ballots and tally sheets.

The Grand Lodge Election Tellers shall meet at the Grand Lodge offices on the first day of May and proceed with the count. The Grand Lodge Election Tellers shall have full charge of the counting of the ballots, assisted by such help as they may require, to be furnished by the General Secretary-Treasurer. They shall have power to adopt rules to govern their work, and to hear complaints, and make adjustments, and render decisions strictly in accordance with the law. After they have counted and tabulated the vote they shall render a report containing a detailed statement of the vote cast in each lodge together with a report on all irregular or contested ballots, for the respective candidates. Their report shall be published in the June issue of the Journal.

Declaration of Election

SEC. 16. The nominees receiving the highest number of votes for the respective offices shall be declared duly elected by the Grand Lodge Election Tellers.

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Second Ballot

SEC. 17. In case that candidates for any office receive an equal number of votes, or a tie vote, their names shall be resubmitted in accordance with Section 7, Article II of this Constitution, and such procedure shall be continued until some one candidate shall receive a greater number of votes than the other candidate contesting for the same office. If the second or other succeeding ballots do not result in an election prior to the expiration of the term of office of the then incumbent, said incumbent shall be retained in office until his successor is duly elected.

Filling Vacancies

SEC. 18. Should a vacancy occur in any Grand Lodge office between elections, through any cause (other than a Recall), the

vacancy shall be filled in accordance with the provisions of Article III, Section 4, and Article IV, Section 2, except that when such vacancy occurs within one year prior to the call for nominations in Grand Lodge elections, the member appointed to the vacancy shall complete the unexpired term.

Installation

SEC. 19. Grand Lodge officers shall be installed by the International President, or his deputy, and they shall assume the duties of their respective offices the first day of July following their election, or as soon thereafter as the result is made known: Provided, that each officer shall qualify within ten (10) days after being notified to appear for installation.

Recall Provisions

SEC. 20. (a) Any local lodge in good standing with the Grand Lodge of the International Association of Machinists may propose the recall of any one or more of the Grand Lodge officers the Committee on Law and delegates to the A. F. of L. and the Trades and Labor Congress of Canada by filing with the General Secretary-Treasurer a petition for the recall of such officer or officers, 273 together with the endorsements thereof under the seal of at least fifteen (15) per cent of all the local lodges in good standing with the Grand Lodge of the International Association of Machinists, not more than fifteen (15) of which endorsing local lodges shall be located in any one state, province, or territory. Every petition for a recall must contain a clear, concise statement of the specific charges against such officer or officers upon which the proceedings are based. All circulars issued by a local lodge for the purpose of securing the endorsements of other local lodges must be identical as to content and form including the endorsement form attached thereto. All such circulars shall bear the date of issuance, be made returnable to the local lodge issuing the same and deposited by such local lodge with the General Secretary-Treasurer within forty-five (45) days after the date thereof.

(b) Upon receipt of the petition and endorsements for recall, the General Secretary-Treasurer shall forthwith notify the officer or officers whose recall is sought and furnish him or them with a correct copy of the petition and the numbers of the local lodges appearing as endorsers thereof, and such officer or officers may within ten (10) days thereafter file a written statement of defense, containing not more than 500 words, with the General Secretary-Treasurer, who shall cause the same to be printed and mailed to all local lodges concurrently with the call for the endorsements for nominees next hereinafter provided for.

(c) On the first day of the month next following, the General Secretary-Treasurer shall issue a circular to all local lodges call-

ing for endorsements of nominees for the office or offices held by the officer or officers whose recall is sought. The selection of candidates and the election, and the tabulating and counting of the votes, except as hereinafter modified, shall proceed in accordance with the election laws hereinabove set forth, substituting the name of such months as may be necessary to hold an interim election in place of those months specified in Section 3 and 4 of this Article.

(d) Unless the officer whose recall is sought lacks the necessary qualifications or files a written declination with the General Secretary-Treasurer, his name shall be printed upon the official ballot together with the name of the one other candidate
274 who has received at least twenty-five (25) endorsements and the greatest number of endorsements as candidate for nominee for that office. Should the officer whose recall is sought decline to be a candidate or lack the necessary qualifications, then the names of two persons who have each received at least twenty-five (25) endorsements and greatest and next greatest number of endorsements, respectively, as candidates for nominee for such office shall be printed upon the official ballot as candidates for such office.

(e) The candidate for any office who receives the greatest number of votes in any recall election shall be promptly notified of his election by the General Secretary-Treasurer. If the officer whose recall is sought, be not elected, his tenure of office shall terminate fifteen (15) days after the result of the election is announced and the newly elected officer shall thereupon assume the duties of the office.

ARTICLE III

International President

SECTION 1. The International President shall preside at all meetings of the Grand Lodge. He shall serve as chairman and as a member of the Executive Council. He shall preserve order, and in all cases where the vote is equally divided in a convention or a meeting of the Executive Council he shall cast the deciding vote. He shall enforce the laws of The International Association of Machinists; decide all questions of order and usage and all constitutional questions, subject, however, to an appeal as provided in Section 6, Article XXI of this Constitution.

Chief Organizer

SEC. 2. The International President shall be the chief organizer of the Grand Lodge and shall have full control of all Grand Lodge representatives and of all organizing. He shall provide suitable literature for organizing purposes and have the authority when conditions warrant to appoint Grand Lodge representatives and

assign them to such localities and for such particular terms and duties as shall be for the best interests of the organization. All of which shall be subject to the approval of the Executive Council.

Signing Orders

SEC. 3. The International President shall countersign all orders for the payment of money by the Grand Lodge and for the withdrawing of money on deposit to its account.

Officers Permanent and Temporary and the Committees

SEC. 4. The International President shall assign the elected Vice Presidents to such territories or industries as are necessary to promote the best interests of our Organization as provided in Section 4 of Article IV.

He shall also appoint all officers pro tem or Committees not otherwise provided for, and may deputize other members of the Organization in good standing to perform any of the duties of his office, except that during his absence from the Grand Lodge Headquarters he shall, if he deems it necessary, designate one of the elective Grand Lodge Officers to exercise the authority of his office.

In cases of vacancies occurring in any Grand Lodge office, the President shall temporarily appoint a qualified member to fill such office, but such appointment shall not be made for a longer period than is necessary to hold a special election under the provisions governing our general elections, except that when such vacancy occurs within one year prior to the call for nominations in Grand Lodge elections, the members appointed to the vacancy shall complete the unexpired term.

Supervision of District and Local Lodges

SEC. 5. The International President shall have the direction and supervision of all districts and local lodges, with full authority to suspend individual members, or district or local lodges, for incompetency, negligence, insubordination, or other failure to properly perform their duties as members of this organization and for violation of the provisions of the Constitution of the Grand Lodge or the constitution of local lodges. With the approval of the Executive Council he may revoke the charter of any district or local lodge found guilty after trial by the Executive Council of a violation of the Constitution of the Grand Lodge, or the constitution for local lodges of the International Association of Machinists.

Any District or Local Lodge, or any individual, subject to trial by the Executive Council, shall have the right to demand that the trial be conducted in the locality where the offence is alleged to

have been committed. Either the Executive Council or its authorized representatives shall conduct the trial, of which a full transcript shall be made, upon which transcript the findings shall be based.

Visiting Lodges

Sec. 6. Should any district or local lodge be involved in trouble, and in all cases when a grievance is submitted to the Executive Council, the International President shall visit said district or local lodge in person or by deputy.

Report to Executive Council

Sec. 7. Whenever the International President submits, through correspondence, any question to the members of the Executive Council for their decision, he shall notify the members of such Council, and all other parties in interest, of the decision of the Executive Council immediately upon receipt thereof.

Salary of International President

Sec. 8. For the faithful performance of his duties, the International President shall receive an annual salary of $7,500 payable in 52 equal weekly installments.

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ARTICLE IV

Executive Council

Membership and Meetings

Section 1. The Executive Council shall consist of the International President, the General Secretary-Treasurer and the General Vice-Presidents. The International President shall be the Chairman and the General Secretary-Treasurer shall be the Secretary of the Executive Council. Meetings shall be called by the Chairman from time to time as the affairs of the Association require consideration by the Council, and meetings must be called by him upon request from a majority of the officers composing the Council.

Powers

Sec. 2. Between conventions all Executive and Judicial powers of the Grand Lodge shall be exercised by the Executive Council, sessions of which shall have the same authority to initiate legislation as has a delegate convention of the Association, and which shall have the power to require reports from any officer or officers of the Grand Lodge or any district or local lodge, or to remove any such officer or officers for justifiable cause. In the event of a vacancy occurring in the office of the International President, the Executive Council shall appoint a member of this Association

who has the qualifications as set forth in Section 2 of Article 2 to act as temporary International President, but no such appointment shall be made for a longer period than is necessary to hold a special election under the provisions of the law governing our general elections except that when such vacancy occurs within one year prior to the call for nominations in Grand Lodge elections, the member appointed to the vacancy shall complete the unexpired term.

Investment of Funds

SEC. 3. The Executive Council shall have full control
278 over all of the funds, deposits, investments and property of every kind, nature and description belonging to the Grand Lodge of The International Association of Machinists. All investments of the funds of the Grand Lodge made upon the order of the Executive Council shall be in the name of the Grand Lodge of the International Association of Machinists, so that no amounts can be withdrawn therefrom without the signatures of tse International President, the General Secretary-Treasurer and one member of the Executive Council, upon an order to which the seal of the Grand Lodge is attached. The Executive Council may withdraw investments, negotiate loans upon securities belonging to the Grand Lodge of The International Association of Machinists, and sell such securities as the needs of the Grand Lodge may require; but no such withdrawals, sales, or transfers shall be negotiated without the authority of the Executive Council evidenced by the signatures of the International President, the General Secretary-Treasurer and one member of the Executive Council, upon which the seal of the Grand Lodge is attached. The Executive Council shall have power to borrow from one fund to another in cases of great emergency, provided that provision is made in the resolution sanctioning the loan for its repayment.

The funds of the Grand Lodge of The International Association of Machinists shall be invested only in United States Government Bonds, United States Government Notes, State and Municipal Bonds, supported by the general income of the State or Municipalities, Bonds of the Government of the Dominion of Canada and other investments that would be approved by the Probate Court of the District of Columbia as suitable investment for guardian or trustee funds.

Duties of Vice Presidents

SEC. 4. When not in attendance at meetings of the Executive Council, the General Vice Presidents shall act as General Organizers, or shall perform such duties in such territories or industries as may be decided by the International President to be for the best interests of the Association and shall report their activities through the Journal every three months.

279 Expenses and Recommendations

SEC. 5. During each and every week the General Vice-Presidents shall file with the International President an itemized account and full report of their expenses, and activities as officers of the Grand Lodge.

Salary

SEC. 6. For the faithful performance of their duties the General Vice-Presidents shall each receive an annual salary of $4,500, payable in 52 equal weekly installments.

ARTICLE V

Duties of the General Secretary-Treasurer

SECTION 1. The General Secretary-Treasurer shall be the secretary and keep correct records of all meetings of the Executive Council and of all conventions of the Grand Lodge of The International Association of Machinists. He shall cause the proceedings of all meetings of the Executive Council to be printed in pamphlet form and mail a copy thereof to each local lodge within fifteen days after the adjournment of such meetings. He shall conduct all correspondence in the name of the Grand Lodge, excepting correspondence dealing with the duties and responsibilities of the offices of the International President and the Editor, and be subject to the directions of the Executive Council. Whenever necessary he may visit any local or district lodge for the purpose of instructing the officers in the performance of their duties. He shall have the general supervision of the business of his office and, upon request, shall submit his books of account together with all papers, files, documents, etc., in his possession for the inspection of the Executive Council and the duly appointed Auditing Committee. He shall also codify and index the various articles and sections of the Constitution.

Receipt of Funds

SEC. 2. The General Secretary-Treasurer shall receive all
280 funds paid to the Grand Lodge from all sources and distribute same to the credit of the accounts for which they are intended. He shall keep a systematically arranged book account between the Grand Lodge and each local lodge, and a journal subscription list; he shall issue monthly, in pamphlet form, an itemized account of all receipts and expenditures, and a monthly review statement showing in detail all financial transactions between the Grand Lodge and local lodges; he shall upon request of any local lodge furnish a copy of the expense account of any paid representative of the Grand Lodge for the period specified by such local

lodges, provided such request does not include a period prior to the next preceding Grand Lodge audit.

All receipts from investments made by the Grand Lodge shall be placed in an emergency fund and used for reinvestment under authority of the Executive Council.

Audit of Local and District Lodges

SEC. 3. The General Secretary-Treasurer shall audit the books of any local or district lodge whenever in his opinion such an audit is advisable, and he shall from time to time appoint with the approval of the Executive Council such auditors as may be necessary to carry on this work.

Upon demand therefor by the General Secretary-Treasurer, the officers of any local or district lodge shall forthwith surrender and turn over to the General Secretary-Treasurer or to an auditor whom he may designate, all books, vouchers, bills, receipts and records of such local or district lodge. Any local or district lodge, or officer thereof, who refuses to comply with the provisions of this section shall be liable to suspension or expulsion by the Executive Council.

Deposit of Funds

SEC. 4. All moneys received by the General Secretary-Treasurer shall be deposited daily by him in a bank of sound financial standing in the name of the Grand Lodge of The International Association of Machinists, which deposit shall be subject to withdrawal check signed by the General Secretary-Treasurer and countersigned by the International President. He shall invest, in
281 conformity to the provision as contained in Article IV, Section 3, the accumulated funds of the Grand Lodge of The International Association of Machinists in excess of $[illegible],000 as directed by the Executive Council.

Per Capita Tax For All Workers Whether Male or Female

SEC. 5. The General Secretary-Treasurer shall collect per capita tax in proportion to the business transacted as shown by the regular monthly report of each local lodge, in accordance with the following rates which include subscription to the Machinists' Monthly Journal:

Monthly per capita tax for Journeymen and Specialists	$1.00
Monthly per capita tax for Apprentices	.50
Monthly per capita tax for Machinists Helpers and Production Workers	.65
Initiation and Reinstatement Fees for Journeymen, Specialists, Machinists Helpers, Apprentices and Production Workers	1.50
Initiation and Reinstatement Fees on Grand Lodge Initiations and Reinstatements	7.50
Monthly dues for tic and Lodge Affiliation	2.00
Unemployment Stamps	.10

The General Secretary-Treasurer shall furnish a suitable due book at a cost to lodges of not more than ten (10) cents each, in which stamps may be affixed and cancelled. Such due books shall provide spaces for the entering therein of transfers, assessments and the designation of the amount of dues charged by each lodge and for the registering of votes in Grand Lodge elections.

Upon receipt of per capita tax, accompanied by the report of any local lodge, the General Secretary-Treasurer shall furnish stamps as receipts, in proportion to the number of initiations, reinstatements and number of months' dues paid. He shall also keep a record of all individuals affiliated with the Grand Lodge because they are working in localities where there is no local lodge.

Reports

SEC. 6. All decisions rendered by the International Presi-
282 dent or by the Executive Council, whether through correspondence or in regular session, shall be published in full by the General Secretary-Treasurer in the next monthly pamphlet containing itemized statement of receipts and expenditures provided for in Section 2 of this Article; and he shall perform such other duties as may be required of him by the laws, customs and usages and the Constitution of the Grand Lodge of The International Association of Machinists.

Assistant

SEC. 7. The General Secretary-Treasurer shall appoint an assistant secretary, who must be a member in good standing of a local lodge of The International Association of Machinists, and employ such other help as may be necessary to perform the work of his office, subject to the approval of the International President and the Executive Council.

Salary

SEC. 8. For the faithful performance of his duties the General Secretary-Treasurer shall receive an annual salary of $6,500, payable in 52 equal weekly installments. He shall give a bond for the faithful performance of his duties in the sum of $100,000, to be approved by the Executive Council.

Duties of Assistant Secretary

SEC. 9. The Assistant Secretary shall perform all duties assigned to him by the General Secretary-Treasurer, and in the absence of that official, shall have supervision of the office. For the faithful performance of his duties he shall receive a salary of $3,600 per year, payable in 52 equal weekly installments.

Bond of Assistant Secretary

SEC. 10. The Assistant Secretary shall give bond for the faithful performance of his duties in such amount and with such surety as may be approved by the Executive Council.

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Grand Lodge Auditors

SEC. 11. Grand Lodge Auditors shall perform such services as may be required of them by the General Secretary-Treasurer, and shall receive a salary of $3,600 per year, payable in 52 weekly installments.

ARTICLE VI

The Journal and Duties of the Editor

Journal and Editor

SECTION 1. The Grand Lodge of The International Association of Machinists shall publish a monthly magazine to be known as the "Machinists' Monthly Journal," which shall be edited and published under the management and supervision of the Editor, with and under the advice of the Executive Council.

Subscriptions

SEC. 2. Subscriptions to the Journal shall be at the rate of $1.00 per annum and shall be included and collected in the regular per capita tax. The Journal shall be mailed to the home address of each subscriber.

Journal Finance

SEC. 3. All moneys received from subscriptions, advertising, or other source in connection with the publication of the Journal shall be paid to the General Secretary-Treasurer, who shall hold the same as a separate fund of the Grand Lodge of The International Association of Machinists, and all bills chargeable against the Grand Lodge in connection with the publication of the Journal shall be paid from said special fund by warrant duly signed by the International President. All contracts for advertising in the Journal shall be made subject to the right of the Grand Lodge to cancel the same should the advertiser become involved in any dispute with organized labor.

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Journal Contents

SEC. 4. The Machinists' Monthly Journal shall contain the roster of the Grand Lodge of The International Association of Machinists, and shall be devoted to the interests of the members

of the machinist craft and the advancement of the principles of organized labor. To this end the Editor shall become informed upon current legislative enactments, judicial decisions, labor statistics, etc., of interest to and affecting the labor movement, and from time to time shall publish the same in the Journal for the information of the members of local lodges. The Editor, subject to the supervision of the Executive Council, shall decide upon all matters for publication in the Journal except that no matters that are sectarian in religion or partisan in politics shall be published therein. The rejection of any matter submitted by a local lodge under seal for publication in the Journal shall be accompanied by a letter from the Editor giving such local lodge a full statement of the reasons therefor.

Neither the editorial or other columns of the Machinists Monthly Journal shall be used to support or oppose the candidacy of any member running for office in the Grand Lodge.

Salary

SEC. 5. For the faithful performance of his duties, the Editor shall receive an annual salary of $4,500, to be paid in 52 equal weekly installments.

ARTICLE VII

Auditing Committee

SECTION 1. Semi-annually the local lodges within a radius of 40 miles of Grand Lodge headquarters shall elect an Auditing Committee of three members. The International President shall select, in regular rotation each six months, three of the 285 above lodges, who shall each elect one member of the Auditing Committee. No individual member shall serve on the Grand Lodge Auditing Committee more than once in three years.

This auditing committee shall employ an expert accountant and proceed in the third week in January and July of each year to examine and make a complete audit of the books and accounts of the Grand Lodge of The International Association of Machinists, covering the six months period ending June 30th and December 31st. A full report, including a statement of all assets and liabilities of the Grand Lodge, shall be published over the signatures of and verified under oath by the individual members of said auditing committee and the expert accountant who assisted them. Each member of the auditing committee shall receive the maximum rate of pay for Journeymen Machinists in the District of Columbia for the time actually engaged in the performance of his duties, and the expert accountant shall have such compensation as is agreed upon by a majority of the members of the auditing committee and said accountant, all of which expenses shall be paid by the Grand Lodge.

ARTICLE VIII

Grand Lodge Representatives

SECTION 1. All Grand Lodge Representatives appointed by the International President under authority of Section 2 of Article III of this Constitution shall be members of a local lodge and in continuous good standing for at least five years immediately prior to their appointment, free from delinquencies of any nature to the Grand Lodge or to any district or local lodge of The International Association of Machinists. For the faithful performance of their duties, Grand Lodge Representatives shall receive an annual salary of $3,600, payable in 52 equal weekly installments.

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ARTICLE IX

Conventions

Method of Calling Conventions

SECTION 1. During the month of September in the year 1932, and every four years thereafter, a Grand Lodge Convention of the Association shall be held in a city to be selected by the General Executive Council. Notice of such conventions shall be issued to all local lodges by the General Secretary-Treasurer not later than the 1st of May in each convention year. In case of an emergency the Executive Council may, upon its own initiative, or after having received the endorsement under seal of at least twenty (20) per cent of all local lodges, not more than fifteen (15) of which are located in any one state, province or territory, submit a call for a special convention, and thereupon the General Secretary-Treasurer shall prepare a ballot and submit the same through the referendum calling for a special convention of the Grand Lodge to convene at such date as seems best to meet the emergency. In the event that a majority of those voting, vote in favor of holding a special convention, the Executive Council shall, as soon as practicable thereafter, select the city in which said special convention shall be held.

Representation and Vote

SEC. 2. Each local lodge is entitled to be represented in all conventions of the Grand Lodge by one delegate, and in addition thereto each local lodge having a membership of more than 200 is entitled to an additional delegate for each additional 200 members or major fraction thereof. Each local lodge represented in convention by a delegate is entitled to one vote, and all local lodges having a membership of more than 100 are entitled to one additional vote for each additional 100 members or majority fraction thereof.

287 The number of votes each local lodge is entitled to shall be computed upon the number of members of such local lodge in good standing at the close of the month of July of the convention year. The delegation of any local lodge may by unanimous consent cast the vote to which said lodge is entitled as a unit, or the vote to which said lodge is entitled may be divided equally among its delegates, and in case an equal division is impossible the fractional number of votes left after the division shall be cast by the first delegate elected by said lodge. If, however, not more than three local lodges, within a radius of 150 miles of each other, and each having less than one hundred members, so desire, they may combine to send one delegate to represent them at Grand Lodge Convention. Such delegate must be elected by a majority vote in each of the lodges so combining and the voting power of such combined lodges shall be based upon their combined membership exactly as if it were one lodge.

Election of Delegates

SEC. 3. At a summoned meeting of each local lodge, in the month of June of convention years, an election of delegates and alternate delegates shall be held by all local lodges, and the secretary of each local lodge shall immediately thereafter forward to the General Secretary-Treasurer a report of the election, giving the names, card numbers and residence address of all delegates and alternate delegates, which report shall be made upon blank forms furnished therefor by the General Secretary-Treasurer.

Local lodges organized and affiliated with the Grand Lodge in the month of June of a convention year may elect delegates and alternate delegates during the month of July. Local lodges organized and affiliated after July 1st of any convention year are not entitled to representation in the convention.

The General Secretary-Treasurer shall prepare and forward a complete list of all duly elected delegates and alternate dele-
288 gates with their respective addresses to all local lodges not less than 30 days prior to the opening of the convention.

He shall also mail to each delegate a copy of the "Report of Grand Lodge Officers" so that it will be in the hands of the delegates thirty days before the convention opens.

Should any delegate or alternate delegate be unable to serve as such, the local lodge may elect his successor at any meeting prior to the convening of the convention, and the secretary of such local lodge shall forthwith notify the General Secretary-Treasurer of the change.

Whenever a special convention of the Grand Lodge has been called by a vote submitted through the referendum, the General Secretary-Treasurer shall rearrange the dates for the election of delegates, etc., in strict accordance with the provisions of this

Article, to meet the emergency necessitating the holding of the convention.

Qualifications of Delegates

SEC. 4. Every delegate to conventions of the Grand Lodge must be a member in good standing of the local lodge from which he holds credentials for at least six months prior to his election, free from delinquencies of any nature to the Grand Lodge or to any district or local lodge, and at the time of his election and for six months prior thereto working at the trade. This qualification shall not be required of or apply to any salaried employee whose time is fully occupied by the Grand Lodge or any district or local lodge of The International Association of Machinists, or by the American Federation of Labor, nor to individuals who have been unable to obtain employment at the machinist trade because of a strike, lockout, discrimination or temporary physical disability, or to members who are retired on pension and are paying full membership dues.

No local lodge shall be entitled to representation in any convention of the Grand Lodge unless such local lodge was in good standing, free of delinquency of any nature to the Grand Lodge at the close of the month of June of the convention year.

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Grand Lodge Officers Not Eligible

SEC. 5. No member shall serve as a delegate to a Grand Lodge Convention who is, during the time of the convention, on the pay roll of the Grand Lodge.

Delegates' Expenses

SEC. 6. The transportation of one delegate from each local lodge in continuous good standing with the Grand Lodge for six months prior to the convening of the convention and who is accepted and seated in the convention as a delegate, shall be paid by the Grand Lodge upon presentation of the bill of the local lodge, an amount equal to the current round trip railroad fare between the place in which the local lodge is located and the place where the convention is held. Lodges whose delegates travel on passes, shall be entitled to round trip transportation for one delegate, from the place where the lodge is located, to the place where the convention is held, upon presentation of the bill of the local lodge therefor.

Credentials Committee

SEC. 7. The Executive Council shall act as the committee on credentials at all conventions of the Grand Lodge and shall meet within four days next preceding the convening of the convention

to consider all matters affecting the qualifications of delegates, including the financial standing of local lodges with the Grand Lodge, and shall thereafter report its finding and recommendations to the convention.

Resolutions Committee

SEC. 8. At least fifteen (15) days before the convening of any convention of the Grand Lodge, the International President shall appoint five (5) duly elected and qualified delegates to such convention as a resolutions committee. The five delegates so appointed may, on the authority of the International President, be called in not more than seven days before the convention convenes for the purpose of considering such resolutions as may properly come before the convention, and shall report their findings and recommendations to the convention as early as the business of the convention will permit.

For the faithful performance of their duties each member of the resolutions committee shall receive twelve dollars ($12) per day together with actual and necessary hotel expenses, for the time engaged prior to the convening of the convention and after arrival at the convention city.

Committees

SEC. 9. The International President shall appoint a committee on rules for each convention of the Grand Lodge. All committees necessary for conducting the business of the convention, not otherwise provided for, may be appointed by the International President and Executive Council, subject to the approval of the convention.

Parliamentary Laws

SEC. 10. Roberts' Rules of Order shall be the parliamentary law of this Grand Lodge and shall apply to all parliamentary procedure of the Grand Lodge, except in cases otherwise provided for by this Constitution.

ARTICLE X

Revenues of the Grand Lodge

SECTION 1. The Revenue of the Grand Lodge of The International Association of Machinists shall be derived from the sale of supplies, collection of per capita tax, initiation fees, reinstatement fees, the income from the publication of the Machinists' Journal, interest on investments and such special assessments as may be levied from time to time.

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Assessments

SEC. 2. Whenever in the opinion of the Executive Council additional funds over and above the regular income are necessary to carry on the work of the Grand Lodge, the General Secretary-Treasurer shall prepare a ballot and submit the same through the referendum calling for the assessment recommended by the Executive Council. If a majority of those voting, vote in favor of the assessment, then the same shall thereupon become and be a lawful charge against the individual members of all local lodges.

All moneys received on a Grand Lodge assessment shall be used only for the purpose specified on the ballot calling for the same, except it be approved by a two-thirds vote on a general referendum.

Assessment Rates

SEC. 3. In the event of an assessment being levied by the Grand Lodge, apprentices shall be required to pay only one-half (½), and machinists helpers and production workers shall be required to pay only sixty-five per cent (65%) of the assessment levied upon journeymen machinists.

ARTICLE XI

Benefits

Strike and Lockout Donations.

SECTION 1. Members of local lodges who have been in continuous good standing for at least six months and who have ceased work on account of a grievance theretofore approved by the Executive Council, or who have been victimized and have satisfied the Executive Council that by reason of this discrimination they are unable to secure employment, shall receive such donations from the Grand Lodge as may be determined by the International President and Executive Council according to the amount of funds available for such purposes.

292 No donations shall be paid unless the strike or victimization extends over a period of more than two weeks; thereafter donations shall be paid in the amount determined upon by the International President and Executive Council.

Members of local lodges on strike or victimized, but not at the time entitled to donations because lacking the six months' membership required herein, shall be entitled to receive donations from the Grand Lodge, as may be determined by the International President and Executive Council, as soon as they have been in good standing membership for the six months' period required herein.

The payment of donations provided for in this section may be

denied or terminated at any time by the International President and Executive Council when, in their opinion, the funds of Grand Lodge do not warrant the expenditure.

Any donations paid by Grand Lodge shall be divided or apportioned to members on strike or who may be victimized in the same ratio as per capita tax is paid upon said members.

Deduction for Arrearages

SEC. 2. Whenever a member of a local lodge claiming strike or victimized donations is in arrears for dues or assessments, or "Labor" subscriptions the General Secretary-Treasurer may deduct from such donations an amount sufficient to pay all such arrearages.

Method of Payment

SEC. 3. Whenever a strike has been ordered or approved by the Grand Lodge each local lodge member affected thereby shall sign the strike record semi-weekly. From the names appearing on the strike record the secretary of the local lodge shall make up a weekly roll showing the names of the individuals on strike or who may be victimized.

After the weekly roll has been approved by the signatures of the president, financial secretary and recording 293 secretary of the local lodge it shall be forwarded to the General Secretary-Treasurer, who, after examination thereof, shall return the same, together with a check of the Grand Lodge covering the amount of any donation made to such roll, which check shall be drawn payable to the president, financial secretary and recording secretary of the local lodge.

Each individual receiving a donation from the Grand Lodge must receipt for the same upon the duplicate roll provided, after which the secretary shall return one copy of said roll to the General Secretary-Treasurer for the files of the Grand Lodge, and place one copy on local lodge files. Except in cases where the distance and time required for the transportation of the mails makes the rule impracticable, the General Secretary-Treasurer shall not forward a check covering a subsequent donation before the receipted roll for the previous week has been received by him. No claim for any donations under the provisions of this section shall be considered or allowed unless presented to the General Secretary-Treasurer within thirty days from the date on which said donations were due.

No donations shall be paid to any individual who refuses to do the duty assigned to him by those in charge of the strike.

Death Benefits

SEC. 4. Upon receipt of proof of the death of a member of any local lodge, duly attested by the signatures of the president and

financial secretary of said lodge on blanks furnished for that purpose by the General Secretary-Treasurer, to which the seal of the local lodge is affixed, the Grand Lodge shall pay the death benefits based upon the rate of per capita tax paid upon the designated member and the period of his continuous good standing membership in a local lodge or local lodges at the time of his demise.

(a) The death benefit for all members in good standing prior to April 1, 1937, of local lodges upon whose membership the full rate of one ($1) dollar per month per capita has been paid to the Grand Lodge shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty ($50) dollars; four (4) years, seventy-five ($75) dollars; five (5) years, one hundred ($100) dollars; six (6) years, one hundred and twenty-five ($125) dollars; seven (7) years, one hundred and fifty ($150) dollars; eight (8) years, one hundred and seventy-five ($175) dollars; nine (9) years, two hundred ($200) dollars; ten (10) years, two hundred and twenty-five ($225) dollars; eleven (11) years, two hundred and fifty ($250) dollars; twelve (12) years, two hundred and seventy-five ($275) dollars; thirteen (13) years, three hundred ($300) dollars.

The provisions of this section do not change, in any way, the accrued death benefit to which members were entitled under the constitution as in effect in 1928; but it does operate to extend the time before any increase in such benefits will accrue to members of less than ten years' standing.

(b) The death benefit for all members initiated or reinstated after March 31, 1937, upon whose membership the full rate of one ($1) dollar per month per capita has been paid to the Grand Lodge shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty ($50) dollars; five (5) years, seventy-five ($75) dollars; seven (7) years, one hundred ($100) dollars; nine (9) years, one hundred and twenty-five ($125) dollars; eleven (11) years, one hundred and fifty ($150) dollars thirteen (13) years, one hundred and seventy-five ($175) dollars; fifteen (15) years, two hundred ($200) dollars; seventeen years, two hundred and twenty-five ($225) dollars; eighteen (18) years, two hundred and fifty ($250) dollars; nineteen (19) years, two hundred and seventy-five ($275) dollars; twenty (20) years, three hundred ($300) dollars.

(c) The death benefit for apprentices upon whose membership only one-half (½) of the full rate of per capita tax has been paid to the Grand Lodge shall be only one-half (½) of the respective amounts set forth under subdivisions (a) and (b) of this section.

(d) The death benefit for all machinist helpers and production workers upon whose membership only sixty-five (65) cents per month per capita tax has been paid to the Grand Lodge shall be sixty-five per cent (65%) of the respective amounts set forth under subdivisions (a) and (b) of this section.

No death benefits shall be paid upon the death of any
295 member who was fifty (50) years of age, or over, at the date of his initiation, or at the date of his last reinstatement as a member of a local lodge of T[illegible] International Association of Machinists. (This provision does not apply to a person who was initiated, or reinstated in a local lodge prior to January 1st, 1917, and who has remained in continuous good standing to the date of his death.)

The term "continuous good standing" as used in this Article designates members of local lodges who are credited and reported to the Grand Lodge as receiving regular monthly due stamps. Members receiving unemployment stamps provided for in Article XII of this Constitution are not entitled to accumulated benefits covering the months for which said unemployment stamps are accepted. All unpaid "Labor" subscriptions shall be deducted from benefits due.

Exemption Cards

SEC. 5. Any member of a local lodge who has been in continuous good standing for thirty (30) years and has become so afflicted or disabled as to prevent him from actively performing the duties of a machinist, or who has been discriminated against for his activities as an organizer, Business Agent, or other official work, and is in consequence unable to obtain employment; or any member who has been continuously in good standing f[illegible] thirty (30) years and has reached the age of sixty-five (65) years, shall upon leaving the trade and upon request therefore be granted a card exempting him from further payment of dues and assessments. The issuing of such an exemption card shall not deprive the member of the death benefits provided for in this article. Members retired on pension, who are not entitled to exemption cards, shall pay full dues for six months per year and shall receive unemployed stamps for the ~~other~~ six months.

Death Benefits—To Whom Paid

SEC. 6. All death benefits payable under the provisions of Section 4 of this Article shall be paid to the next of kin of the deceased in the following order:

(a) To the wife or husband of the deceased.
296 (b) To the child or children of the deceased.
(c) To the parent or parents of the deceased.
(d) To the brothers and sisters of the deceased.

In any case where a dispute arises as to who is entitled to the benefits herein provided for, the payment thereof to the administrator, executor, or any relative of the deceased, shall fully release the Grand Lodge of its obligations hereunder.

Absence of Relatives

SEC. 7. When a member of a local lodge dies, whose burial is not otherwise provided for, the local lodge of which he was a member at the time of his demise, or any local lodge in the locality where he dies, may arrange for his funeral or interment, which local lodge shall thereafter be reimbursed by the Grand Lodge for all reasonable expenses up to the amount of the death benefits of the deceased. The remainder of such death benefits, if any, shall be held by the Grand Lodge subject to any legal claim therefor.

Membership Cancelled

SEC. 8. Delinquency for three (3) months in the payment of dues or assessments shall automatically cancel membership in a local lodge of this Association and all rights, privileges and benefits incident thereto. The period of good standing membership of any person whose membership has been cancelled for delinquency, or other cause shall date from the date of his last reinstatement in a local lodge, as shown by the Grand Lodge records, and his rights, privileges and benefits under the provisions of this Constitution shall attach and date from the date of his last reinstatement, as though he had never before held membership in a local lodge of this Association.

Sick Benefits

SEC. 9. No sick benefits are paid by the Grand Lodge, but any local lodge of The International Association of Machinists may provide in its by-laws for the payment of sick benefits to its
297 members, subject, however, to the approval of the provisions therefor by the International President.

ARTICLE XII

Unemployment Stamps

SECTION 1. Any member of a local lodge, who without fault on his part, is unemployed for the major portion of any month, and therefrom suffers a total or proportionate loss of earnings, due to separation from employment, lay-off or furlough, sickness or disability, is entitled to an unemployment stamp for that month and is thereby excused from the payment of the regular monthly dues, upon complying with the following conditions relating thereto.

(a) He shall register his name and address in the out-of-work book each week during the period of his unemployment, or in case of disability he shall communicate the fact to the financial

secretary or business agent of the local lodge of which he is a member. Members who are sick shall not be required to register personally in the "out-of-work book."

(b) His monthly dues and assessments must be paid within the three months limit as provided for in Section 8 of Article XI.

(c) He shall make application for the unemployed stamp before the expiration of three months from the month during which his last monthly dues were paid.

(d) The financial secretary shall place the unemployed stamp in the square of the month next following that of the month in which the last due stamp was placed.

Conditions of Issue

SEC. 2. Unemployment stamps shall not be issued to members of local lodges who are on vacation or engaged in any business or profession outside of the machine industry. Not more than six unemployment stamps shall be issued to any member of a local lodge during any consecutive twelve month period, unless consent of the Executive Council has been first obtained therefor, except that:

Any member of a local lodge, who has retired from active employment at the trade or from regular employment
298 for hire, or is receiving pension, or annuities provided by Civil Law, in an amount of $50.00 or less per month, shall be allowed continuous unlimited use of unemployment stamps by paying the amount charged therefor by the Grand Lodge. Members who have received unemployment stamps shall, immediately upon securing employment, report to the financial secretary or business agent of the local lodge. Unemployment stamps are issued for the purpose of aiding members of local lodges to maintain their good standing in their respective lodges, but shall not increase the liability of the Grand Lodge for accumulated death benefits for the months covering which the unemployment stamps have been accepted.

Strike Stamps

SEC. 3. Any member who has ceased work on account of a grievance theretofore approved by the Executive Council is entitled to receive strike stamps covering the period during which he is without employment by reason therefor, free of cost, upon complying with the provisions of Section 1 of this Article and conforming to such other requirements as may be instituted for the good and welfare of those involved by the local lodge of which he is a member.

Violations

SEC. 4. Any member who violates any of the provisions of this Article or who obtains an unemployment stamp or strike stamp

by any false pretense or misrepresentation of the facts, shall be subject to such fines and penalties as may be decided upon by the local lodge of which he is a member.

ARTICLE XIII

Strikes

SECTION 1. In case of extreme emergency, such as a reduction in wages, or an increase in the hours of labor, where delay would seriously jeopardize the welfare of those involved, the International President may authorize a strike pending the submission to and securing the approval of the Executive Council. In all other cases the grievances must be submitted to the Executive Council and its approval therefor obtained before any strike may be declared by any local lodge or the members thereof; and any local lodge or members thereof failing to comply with the provisions of this Article shall forfeit all rights to strike donations or to other financial aid from the Grand Lodge during the entire period of the controversy.

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Method of Declaring Strike

SEC. 2. Whenever any difficulty arises within the jurisdiction of any local lodge between its members and any employer or employers growing out of a reduction in wages, lengthening hours of labor, or other grievances incident to the condition of employment, or whenever any local lodge desires to secure for its members an increase in wages, a shorter work day, or other change in the conditions of employment, the local lodge having the greatest number of members involved shall call a meeting of all members directly affected to decide by secret ballot whether the proposed changes shall be accepted or rejected. A majority vote of those present and voting on the question shall decide. If as a result of this decision a strike vote is decided upon, it shall require a three-fourths vote, by secret ballot, of those in attendance and qualified to vote thereon, to declare a strike. Where groups of shops are classified under the jurisdiction of one local lodge, and when uniform demands, for the establishment and maintenance of uniform conditions in such classified groups of shops, have been formulated and adopted by constitutional action of the lodge, then all the qualified members of the lodge employed in such a classified group of shops, shall be entitled to vote on strike action affecting any particular shop in that classified group. Only individuals who have been members of a local lodge for more than six months shall be entitled to vote on the question of declaring a strike. If it is decided to reject the proposed reduction of wages, increased hours of labor, or other changes in the condition of employment, or if it is decided to demand an increase in wages, a shorter work day, or other,

change in the conditions of employment, the decision shall be submitted, either in writing or through a committee, or the
300 business agent, to the employer or employers and if the employees involved are unable to reach an agreement, the recording secretary of the local lodge shall prepare a full statement and history of the matters in controversy and forward the same to the International President, who shall thereupon in person or by deputy visit the local lodge where the controversy exists, and, with a member of the local lodge whose members are involved, investigate the controversy and if possible effect a settlement. Upon receipt of the statement and history of the matters in controversy from the recording secretary of the local lodge the International President shall prepare and forward a copy thereof to each member of the Executive Council, together with a request for their vote on the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the Executive Council the International President shall forthwith notify the local lodge of the decision of the Executive Council. No strike shall be declared by any local lodge or the members thereof without first obtaining the consent of the International President or the Executive Council therefor.

Discontinuance of Grievance

SEC. 3. Should any local lodge fail to receive the sanction of the Executive Council it shall hold a meeting and declare the grievance at an end. Continuing such grievance after failure to secure the sanction of the Executive Council shall be considered sufficient cause for the suspension of any local lodge and the members thereof from all rights and privileges, at the option of the Executive Council.

Declaring Off a Strike

SEC. 4. Any proposal to settle or declare off an existing strike must be presented at a regular or called meeting of a local lodge and decided by the majority vote, by secret ballot, of the members involved therein. Wherever the Executive Council decides that it is unwise to longer continue an existing strike, it may order all members of local lodges who have ceased work in connection therewith to resume work, and thereupon and thereafter all strike
301 donations shall cease, except that the International President, with the consent of the Executive Council, may continue the relief in special deserving cases.

Financing Strikes

SEC. 5. The Executive Council may draw upon the funds of the Grand Lodge to finance any strike or lockout.

Handling Unfair Work

SEC. 6. Whenever members of a local lodge have ceased work on account of a grievance theretofore approved by the Executive Council, and the employer is having work done in other places of employment, whether owned or controlled by such employer or not, members of local lodges employed in such other places of employment may be ordered by the local lodge or by the district lodge, if one exists in that locality, to cease doing such work or to cease working at such places. All such orders must be approved by the Executive Council to entitle members complying therewith to strike donations or victimized donations, as the case may be. In the event of the members of the local lodge not taking action to cease work as herein described, the International President, with the approval of the Executive Council, may order said members to cease work until the dispute is satisfactorily adjusted, or until ordered to return to work by the International President and the Executive Council.

ARTICLE XIV

District Lodges

SECTION 1. District lodges shall be established upon railroads, in industries where mutual shop interests require it, and in localities where two or more local lodges exist, for the purpose of securing mutual protection, harmonious action, and close co-operation in all matters relating to the machinist craft.

A district lodge is a delegate body made up of representa-
302 tatives duly elected from the local lodges within the railroad system, industry, or locality in which the district lodge is established.

All elective officers of District Lodges shall be elected in accordance with the District By-Laws.

Jurisdiction

SEC. 2. The jurisdiction of all district lodges shall be determined and defined by the Executive Council.

Each local lodge within such jurisdiction shall become affiliated with the district lodge unless specially exempted by said district lodge upon the approval of the International President and the Executive Council.

Representation and Revenue

SEC. 3. Each district lodge shall determine the proportion and method of representation therein of local lodges within its jurisdiction, and the revenues to be collected from said local lodges to maintain and carry on the work of the district lodge. All such revenues shall be collected by the financial secretaries of the local

lodges and forwarded to the district lodge officers authorized to receive the same. All officers of the district lodges having to do with the finances of the organization shall be bonded in the bonding and fidelity department of the Grand Lodge.

District lodges collecting revenue or receiving financial assistance shall render quarterly statements of receipts and disbursements to each local lodge within its jurisdiction and at the close of each three months' period shall forward to the International President a complete report on forms provided by him for that purpose.

Authority

SEC. 4. District lodges shall have authority over and control of all local lodges within their jurisdiction, subject to the approval, however, of the Grand Lodge. The bylaws of all district lodges, and the proposed amendments thereto, shall be submitted to the International President for his examination, correction, and
303 approval before final adoption. The provisions of this Constitution relating to local lodges and the constitution of local lodges of The International Association of Machinists shall, in so far as they are practical and adaptable, apply to and control all district lodges of The International Association of Machinists.

District Lodge Assessments

SEC. 5. In case of emergency district lodges may levy assessments upon all members of affiliated local lodges within their respective jurisdiction.

Assessments shall not be levied, however, until the same are approved by a two-thirds vote of all the members in the district in attendance and voting at a summoned meeting of their respective local lodges affiliated with the district, of which meetings, notice has been served to members in writing, by mail or otherwise, at least seven (7) days before date of meeting. In case the vote for assessment is carried by a two-thirds vote and date set for collection, the same shall thereupon become a lawful charge and all members of local lodges affiliated with the district are liable for the assessments, and the same shall be collected as per Article "I," Section 2, of the Grand Lodge Constitution governing assessments of local lodges of The International Association of Machinists. Suitable plans should be arranged by the district lodge, whereby the local lodges and individual members are provided with proper receipts for assessments paid.

ARTICLE XV

Business Agents

SECTION 1. The Grand Lodge shall establish and maintain business agencies upon railroads, in industries and localities whenever

the establishment and maintenance of the same is approved and authorized by the Executive Council: the Grand Lodge shall pay such part of the expense of business agencies as may be approved by the International President and Executive Council.

304 The amount paid by the Grand Lodge to Business Agencies and District Lodges, shall be in each case, the same percentage of the salary paid to the Business Agent or General Chairman; but in no case shall the amount so paid exceed $150.00 per month.

Control of Business Agents

SEC. 2. The International President, with the approval of the Executive Council, shall discontinue the financial support of the Grand Lodge in any case where, in his or its opinion, the conduct or results obtained by any business agent or agency are unsatisfactory. All business agents, whether they are or are not receiving financial assistance from the Grand Lodge, are under the supervision and subject to the orders of the International President and may be deputized by him to act as representatives of the Grand Lodge within or without their respective districts or localities.

Qualifications

SEC. 3. No member shall be permitted to serve as business agent unless he has been in continuous good standing for at least two years prior to his election and free from delinquencies of any nature to the Grand Lodge or any district or local lodges of The International Association of Machinists. No business agent is eligible to any other office in the gift of any district or local lodge, excepting that of delegate to conventions.

Reports

SEC. 4. On the last day of each week all business agents shall file with the International President a report of their activities, and on the first day of each month they shall file with the International President a statement of their expenses. Such expense statements shall be endorsed as approved by the district or local lodge, evidenced by the signatures of the president and secretary thereof.

305 SEC. 5. The work of all business agents shall be confined to the railroad, industry, or locality for which they are respectively elected, unless otherwise ordered by the International President or the Executive Council. While on special service, business agents shall be paid their actual expenses for railroad fare and hotel. The term of office of business agents shall be provided for in the by-laws of the district or local lodge.

ARTICLE XVI

Bonding Department

SECTION 1. The Executive Council shall establish and maintain a bonding and fidelity department, to be under the immediate supervision of the General Secretary-Treasurer, to be the surety on all bonds furnished by and for the financial officers of all district and local lodges.

The General Secretary-Treasurer shall, upon approval thereof by the International President and the Executive Council, issue a semi-annual report of the business transacted by the bonding and fidelity department and all of the books of such department shall be examined and made a part of the semi-annual Grand Lodge audit. The expenses incident to the maintenance of such department shall be paid from the income derived from the business transacted by the department.

Each district and local lodge shall obtain a bond for each of its financial officers through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon and application therefor shall be made to the General Secretary-Treasurer upon blank forms furnished by him for that purpose.

All such bonds shall run for the period of one year and shall be transferable without additional costs to any successor or successors filling the office for which the bond is given during the period for which the bond is written. No such bond shall be for less than
$500 liability, and the premium charged thereon shall not
306 be in excess of $2.50 per year for the first $500 and 75 cents
per year for each additional $100 of liability of the surety thereunder.

Whenever any financial office in the district or local lodge becomes vacant by reason of resignation, death, or removal of any such officer, the books of the office shall be audited as soon as practicable by the trustees or auditors of such district or local lodge, and the recording secretary thereof shall immediately notify the General Secretary-Treasurer of the vacancy. Upon receipt of such notice the General Secretary-Treasurer shall forward an application blank to the recording secretary of the district or local lodge, and immediately after the election of an officer to fill the vacancy an application for the transfer of the bond for unexpired term shall be forwarded to the General Secretary-Treasurer.

ARTICLE XVII

Hold No Other Office

SECTION 1. No officer of the Grand Lodge or of any district or local lodge who is expected to devote his entire time to the duties of his office, shall accept any office or other position from any other

organization or institution unless it is such as will advance the common interests of the working classes, nor shall any member of any local lodge hold membership in the National Civic Federation.

Officers' Expenses

SEC. 2. All Grand Lodge officers, Delegates to the American Federation of Labor, Delegates to the Trades and Labor Congress of Canada, Members of the Law Committee, Grand Lodge Representatives and Grand Lodge Auditors shall be allowed actual and necessary transportation and hotel expenses when away from home on official business, subject to the approval of the International President and the Executive Council. During each and every week, all elected and appointed officers shall file with the International President, an itemized account of their expenses.

307 SEC. 3. The International President, our Vice-President, the General Secretary-Treasurer and the Editor of the Journal shall have Washington, D. C., designated as their headquarters and no hotel expenses shall be allowed while they are at headquarters, except when first elected or temporarily assigned there and then hotel expenses shall be allowed for a period not to exceed sixty days.

Vice Presidents

SEC. 4. All other International Vice Presidents shall be assigned to a home headquarters and no hotel expenses shall be allowed when stationed at such designated headquarters.

ARTICLE XVIII

The Referendum and Its Operation

Definition

SECTION 1. Wherever in this Constitution and in the constitution for local lodges reference is made to the "referendum," it is intended thereby to refer to the practice of submitting matters to a vote of the membership at large through the respective local lodges organized and chartered by and in good standing with the Grand Lodge of The International Association of Machinists.

How Invoked

SEC. 2. Any member or members of a local lodge in good standing with the Grand Lodge of The International Association of Machinists, shall have the privilege of proposing amendments to the Constitution, submitting any grievance that may arise, and proposing appeals from the decisions of the Executive Council, by submitting same to the General Secretary-Treasurer after having first received endorsement thereto under the seal of not less

than ten (10%) percent of all local lodges in good standing, not more than ten of which are located in any one state, province, or territory.

(The word "amendment" wherever used in the Constitution shall be taken to mean any addition to, changes, or cancellations of the Constitution of the Grand Lodge and the constitution of local lodges.)

Form of Amendments

SEC. 3. All proposed amendments to this Constitution shall be in such form as to state the substance rather than the exact language of the proposed addition, cancellation or change, that is, the purpose to be accomplished rather than the wording or the designation of certain articles or sections, and the General Secretary-Treasurer shall submit the same as provided in the next succeeding section with a clause attached thereto authorizing the necessary changes in the Constitution.

SEC. 4. Upon receipt of any such amendment, grievance or appeal, together with the endorsements thereof as required under Section 2 of this Article, the General Secretary-Treasurer shall cause the same to be printed in the form of a circular arranged in such a manner as shall allow each subject to be decided, to be voted upon separately and forwarded to the respective local lodges in sufficient numbers, so that each member in good standing in such local lodge shall have a copy at the first meeting of his lodge held in the month of January of each year following the receipt of the same, except in years when conventions are held under the provisions of Article IX of this Constitution.

Publication of Amendments

SEC. 5. All proposed amendments to the Constitution of the Grand Lodge and local lodges of The International Association of Machinists must be published in the Journal for two months prior to submission through the referendum as provided in Section 4 hereof. In order to enable the General Secretary-Treasurer to comply with the law a period of forty-five (45) days from
308 date of issue of the proposed amendments shall be allowed to secure endorsements. All endorsements received after
309 that period will be discarded.

Method of Voting and Returns

SEC. 6. Whenever a referendum vote is called by the General Secretary-Treasurer, each local lodge shall notify its members of the vote being called, and no ballot shall be accepted unless deposited between the date of January 1 and 31 of each year, according to the call. Within 72 hours after the casting of the

ballots the result of the vote shall be forwarded to the General Secretary-Treasurer on an official tally sheet therefor furnished by him and accompanied by all of the ballots cast by the members of the local lodge.

The perforated register slip containing the name, address, card number and local lodge number of the individual voter shall be retained by the local lodge for at least sixty days after the date of the election.

Fines for Neglect

SEC. 7. For failure to carry out the duties imposed upon him by the foregoing sections the General Secretary-Treasurer shall be fined not less than $25 nor more than $50, the amount to be determined by the Executive Council. The secretary of any local lodge who fails to carry out the duties imposed upon him by the foregoing section shall be fined not less than $2.00 or more than $5.00, the amount to be determined by his local lodge. The local lodge to which the secretary belongs shall collect and retain one-half (½) of the fine and forward the balance thereof to the General Secretary-Treasurer.

Publication of Votes and Amendments

SEC. 8. The General Secretary-Treasurer, upon receipt of the vote upon any proposed amendment, shall furnish a copy of the same, including the vote of each local lodge, to the Editor who shall publish the same in the next issue of the Journal. All
310 amendments so adopted shall be published monthly thereafter until the Constitution is revised and reprinted.

Special Meeting of Law Committee

SEC. 9. When considered necessary the International President and the Executive Council may call a meeting of the Committee on Law to meet during the month of March for the purpose of incorporation into the Constitution such changes as have been made therein by the submission of amendments through the referendum.

When in Effect

SEC. 10. Amendments so adopted shall become operative and in force upon the first day of the quarter succeeding the publication of the vote, and no amendments shall be submitted which provide that the same shall be immediately effective and in force. There shall not be initiated a proposal for revision or cancellation of an adopted Amendment to this Constitution until after such adopted Amendment has been in effect for one year.

Resubmission

SEC. 11. Any amendment which failed to receive the majority of votes shall not again be submitted through the referendum until twelve months have elapsed and then only after again complying with the provisions of this Article in relation to the submission of amendments.

Changes in Salaries and Per Capita Tax

SEC. 12. All changes in the salaries of Grand Lodge officers and the amount of per capita tax to the Grand Lodge must be submitted to the membership of the local lodges through the referendum for adoption.

311 ARTICLE XI

Delegates to the American Federation of Labor and Other National or International Affiliations

International President First Delegate

SECTION 1. The International President, by virtue of his office, shall attend all conventions of affiliated bodies as a regular delegate and act as chairman of the delegation.

Division of Votes

SEC. 2. The number of votes to which the Grand Lodge of The International Association of Machinists is entitled shall be equally divided among its delegates.

Salary

SEC. 3. Delegates to conventions of affiliated bodies shall receive $10.00 per day as compensation for time spent in attending such conventions.

ARTICLE XX

Individual Affiliations

SECTION 1. Any officer or representative of the Grand Lodge may receive the application of any machinist who is working in a locality where there is no local lodge of The International Association of Machinists for affiliation with the Grand Lodge. The applicant shall be obligated by the officer or Grand Lodge Representative who receives the application, and the application, together with an initiation fee of seven dollars and fifty cents ($7.50) shall be forwarded to the General Secretary-Treasurer, who, upon the receipt thereof, shall enter the applicant's name upon the record of Individual Affiliations of the Grand Lodge and issue a due book to the machinist so affiliated. All such individuals affiliated shall

pay two dollars ($2) per month dues directly to the Grand Lodge by forwarding the same to the General-Secretary-Treasurer.

SEC. 2. All of the provisions of this Constitution and of the constitution for local lodges shall, in so far as they are applicable, apply to and be binding upon all such affiliated members.

Provisions for Constitution for Local Lodges

SEC. 3. The Grand Lodge shall provide a constitution for the government and control of local lodges, and all local lodges organized and affiliated in the Grand Lodge of The International Association of Machinists shall be governed and controlled thereby. The constitution for local lodges may be amended in the same manner as provided herein for the amendment of the Grand Lodge Constitution and by no other method whatsoever.

Bylaws

SEC. 4. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the constitution for local lodges. The proposed bylaws of all local lodges, and any amendments thereafter proposed, shall be submitted to the International President for examination, correction, and approval before adoption.

ARTICLE XXI

Improper Conduct

SECTION 1. Any member or members of any district or local lodge circulating or causing in any manner to be circulated any false or malicious statement reflecting upon the private or public conduct, or falsely or maliciously attacking the character, impugning the motives, or questioning the integrity of any officer of the Grand Lodge, or officer or member of any local lodge, shall be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

SEC. 2. Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the Grand Lodge, or the constitution for local lodges, shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

SEC. 3. The International President and Executive Council shall have authority to expel any member guilty of joining, or participating in any dual organization.

SEC. 4. It is the duty of any member of a local lodge, who has information of a violation of any provision of the Constitution of the Grand Lodge or the constitution for local lodges by any member of the local lodge of which he is a member, to immediately prefer charges in writing against such member, by filing the same with the president of such local lodge. The president of the local lodge with whom the charges are filed shall forthwith proceed to bring the accused to trial under the provisions of the Code, as set forth in Article K of the "Constitution for Local Lodges of The International Association of Machinists."

SEC. 5. In the event that any local lodge, or the members thereof, fail to proceed under the provisions of Section 4 of this Article, or fail or refuse to punish members thereof who are guilty of violating the provisions of the Grand Lodge Constitution or the constitution for local lodges, then, and in that event, any officer of the Grand Lodge or any local lodge, or members thereof, may prefer charges against such member or members by filing the same in writing with the International President. Upon the receipt of such charges the International President shall forward one copy thereof to the accused and one copy thereof to the president of the local lodge of which the accused is a member, together with an order commanding said local lodge to proceed to place the accused on trial under the provisions of the Code as set forth in Article K of the "Constitution for Local Lodges of The International Association of Machinists." If said local lodge fails or refuses, for fifteen (15) days thereafter, to proceed as ordered by the International President, then the International President shall notify the accused and the local lodge of which he is a member of the time and place, when and where the Executive Council will meet for the purpose of hearing evidence and trying the accused upon charges theretofore preferred. At such trial before the Executive Council, the accused shall be entitled to all of the privileges set forth in Section 3 of the Code hereinabove referred to.

314 Appeals

SEC. 6. Appeals may be taken from the decision of the International President to the Executive Council. Appeals may be taken from the decision of the Executive Council to a convention of the Grand Lodge, or to the membership at large by submission thereof through the referendum. All appeals shall be laid before the body to whom addressed through the General Secretary-Treasurer. Before any appeals can be taken from any decision of the Executive Council, the decision, and all orders of the Executive Council in relation thereto, must be fully complied with by all parties concerned therein, in order to entitle them to enter an appeal, and in no case shall any district or local lodge, or any individual member or members thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal

under the provisions of this Constitution. No member of the Executive Council shall have a vote on any appeal on which he has already rendered a decision.

ARTICLE XXII

Revision of the Constitution

SECTION 1. Ninety days before the convening of any convention of the Grand Lodge of The International Association of Machinists the General Secretary-Treasurer shall notify all local lodges to elect a committee on the revision of Constitution. All proposed amendements to the Constitution of the Grand Lodge and the constitution of local lodges that come before any local lodge shall be referred to this committee for consideration and recommendation, and, upon the approval of any such proposed amendment by the local lodge, the committee on revision of the Constitution shall forward the same to the General Secretary-Treasurer at least forty-five (45) days prior to the date of the convening of the convention. All such proposed amendments that have been forwarded to the General Secretary-Treasurer forty-five (45) days prior to the date of the convening of the convention shall be compiled, printed in the form of a circular, and mailed by him to each local lodge thirty (30) days before the date of the convening of the convention.

315 No amendments to the Constitution to be submitted to a Grand Lodge Convention, which are received at Grand Lodge Headquarters, too late to be included in the printed circular as provided for in this section shall be referred to the Law Committee, or be dealt with by the Convention.

Meeting and Report of Committee on Law

SEC. 2. The Committee on Law shall meet at the place where the convention is to be held seven (7) days prior to the date of convening for the purpose of considering all amendments proposed by local lodges under the provisions of Section 1 of this Article. The findings and recommendations of the Committee on Law shall be reported to the convention as soon as practicable after the convening thereof.

Submission of Amendments to the Membership

SEC. 3. Immediately after the adjournment of the convention the Committee on Law shall furnish the General Secretary-Treasurer with copies of all amendments approved by the convention, compiled in the form of a ballot suitable for submission to the membership of all local lodges through the referendum. Within thirty (30) days thereafter the General Secretary-Treasurer shall call for a special referendum for the acceptance or re-

jection of all amendments approved by the convention. The provisions of Article XVIII of this Constitution shall control such special referendum, except that the endorsements thereof by local lodges required under Section 2, and the publication required under Section 3, shall not apply to such special referendum election, and the name of the month during which the ballots shall be cast as mentioned in Section 6 shall be changed to conform to the date required by the calling of the special referendum.

Compiling of Constitution

SEC. 4. Whenever a ballot has been taken upon changes in the Constitution as the result of recommendations made by a regular or special Convention of our Association, the Law Committee shall be called into Headquarters during the month of February to incorporate in the Constitution, the changes adopted by such referendum, and are authorized to revise and correct all such parts of the law as are affected by such changes in order that confliction as between law and law may be eliminated.

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Compensation of Committee on Law

SEC. 5. The members of the Committee on Law shall receive the sum of twelve dollars ($12.00) per day when engaged in the performance of their duties at conventions or at the headquarters of the Grand Lodge of The International Association of Machinists.

ARTICLE XXIII

Beneficiary Department

SECTION 1. (a) The Beneficiary Department shall cease issuing Certificates of Death and Disability Benefits, at midnight official time, Washington, D. C., on March 31, 1941.

(b) The Beneficiary Department shall cease collection of all beneficial dues at midnight official time, Washington, D. C., on March 31, 1941, which action will automatically cancel all existing beneficiary certificates and will terminate any and all liability for payment of the $500.00 for death and disability, provided for in said certificates.

(c) All death claims and disability claims, the payment of which is valid on or before March 31, 1941, shall be paid; such payments shall be made in accordance with the terms and conditions of the beneficiary certificate in existence prior to April 1, 1941, and in accordance with the provisions of Article XXIII of the Constitution which was in effect from April 1, 1937 to March 31, 1941. The said payments shall be made in the manner hereinafter provided.

(d) Upon the death of any good standing member of the International Association of Machinists, who was the holder of a good

standing Death and Disability Benefit Certificate on March 31, 1941, the Beneficiary Department shall pay at the time of such member's death, to the named beneficiary or the estate, a sum
317 equal to the amount of beneficial dues paid by such member to the Beneficiary Department upon the last Death and Disability Benefit Certificate issued to such member, less ten per cent (10%).

The above referred to ten per cent (10%) shall be retained by the Beneficiary Department to the credit of the Beneficiary Expense Fund.

Sec. 2. (a) Sufficient funds shall be donated from the General Fund of the Grand Lodge to the Beneficiary Fund of the Beneficiary Department, to pay all valid unpaid Death and Disability claims outstanding against the Beneficiary Department as of midnight, March 31, 1941, as provided for in Sub-section (c) of Section 1 of this Article.

(b) Sufficient funds shall be currently donated from the General Fund of the Grand Lodge, not in excess of fifty thousand dollars ($50,000.00) annually, to the Beneficiary Fund of the Beneficiary Department, to provide for the refund of beneficial dues to good standing members of the Beneficiary Department, as of March 31, 1941, to be paid in accordance with Sub-section (d) of Section 1 of this Article.

(c) Sufficient funds shall be donated from the Grand Lodge General Fund to make up any deficit occurring in the Beneficiary Expense Fund of the Beneficiary Department. The amount of donations currently made to this fund shall be the difference between the ten per cent (10%) of the refund provided for in Sub-section (d) of Section 1 of this Article, and the minimum operating cost chargeable to the Beneficiary Expense Fund.

(d) The total amount of the donations provided for in Sub-sections (c) and (d) of Section 1 of this Article, shall be carried in the financial reports of the Grand Lodge as, "Donations from the General Fund to Liquidate Obligations of the Beneficiary Department".

(e) The Executive Council of the Grand Lodge is hereby instructed to provide the donations required by Sub-sections (a), (b), and (c) of Section 2 of this Article, by earmarking a sufficient amount of annual revenue of the Grand Lodge, to make available the entire amount of these donations over the necessary period of years, beginning with the calendar year of 1941.

(f) Nothing in this Article shall be held or construed to make liable, the General Fund or property of the Inter-
318 national Association of Machinists for any of the obligations of the Beneficiary Department, other than the donations herein provided.

(g) All Articles or Sections of the Grand Lodge Constitution, which may now or hereafter be in conflict with this Article are hereby amended to conform, or repealed.

ARTICLE XXIV

Pension Plan

SECTION 1. The Grand Lodge shall put into operation and maintain a pension plan covering all Grand Lodge elective officers, all Grand Lodge appointive officers, and all Grand Lodge employees.

SEC. 2 (a) On and after the adoption of this Article, in accordance with the provisions of the Grand Lodge Constitution, all eligible persons, as provided in Section 1 hereof, shall be entitled to the benefits of the pension plan, after they have rendered fifteen (15) years or more of service with the Grand Lodge, in one or more of the categories set forth in Section 1 of this Article.

(b) No person in the service of the Grand Lodge, as defined in Section 1 hereof, whose service terminated on or before the date this plan becomes effective, shall be eligible to participate in its benefits, except that those persons who have been and are now receiving a part of their regular salary and rendering part-time service, or who have been retired on pension, shall be eligible to receive a pension only under the terms and conditions of this Article.

SEC. 3. All persons covered by the pension plan as set forth in Section 1, hereof, may retire of their own volition at the age of sixty (60) years, and must retire at the age of seventy (70) years.

SEC. 4. The Executive Council may at any time place on pension any officer or employee, who having completed fifteen (15) years service in accordance with Section 2 hereof, is in its judgment unable by reason of age, illness, or physical incapacity, to carry on his or her duties in an efficient and satisfactory manner.

SEC. 5. (a) The pension of any member of the International Association of Machinists may be terminated upon conviction of violating the laws or principles of the International Association of Machinists, or for failing to maintain good standing membership in the Association. Members charged with such violations may be tried in accordance with the code of the Subordinate Lodge Constitution.

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(b) Employees of the Grand Lodge who are not members of the International Association of Machinists, may have their pensions refused, suspended, or terminated for violations of the principles of trade unionism, or for discreditable conduct. In such cases a right of appeal shall lie to a Grand Lodge Convention.

SEC. 6. (a) The pensions payable by the Grand Lodge in accordance with this Article, shall be not more than one-half the average salary paid to eligible persons during the last ten years of their full time employment, prior to retirement, less the amount received from the Railroad Retirement Fund, or other annuities provided by Civil Law. Provided, however, that in no case, shall the amount of pension paid to any eligible person by the Grand Lodge, exceed $100.00 per month, nor shall the total amount of

the Grand Lodge pension payment, when added to the amount received from the Railroad Retirement Fund or annuities received pursuant to provisions of Civil Law, exceed a total amount of $200.00 per month.

(b) In the case of persons covered by this Article, whose pension computed on the basis set forth in Section 6 (a) hereof, aggregates less than $50.00 per month, then the amount of pension paid to such persons by the Grand Lodge, shall be a sum which added to the amount received from the Railroad Retirement Fund, or annuities provided by Civil Law, shall make such total pension $50.00 per month.

SEC. 7. Nothing in the foregoing regulation shall be construed to constitute a legal liability for the payment of pensions by the International Association of Machinists, or a legal right on the part of any officer or employee to require the payment of such pensions.

ARTICLE XXV

Authority Restricted

All authority and power not specifically delegated to the officers in this Constitution is reserved to the membership.

320 CONSTITUTION FOR LOCAL LODGES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

RULES OF ORDER

Rule 1. On motion, the regular order of business may be suspended by a two-thirds vote of the meeting at any time to dispose of anything urgent.

Rule 2. All motions (if requested by the chair) or resignations must be submitted in writing.

Rule 3. Any conversation by whispering or otherwise, which is calculated to disturb a member while speaking or hinder the transaction of business, shall be deemed a violation of order.

Rule 4. Sectarian discussion shall not be permitted in the meeting under any circumstances.

Motion

Rule 5. A motion to be entertained by the presiding officer must be seconded, and the mover as well as the seconder must rise and be recognized by the chair.

Rule 6. Any member having made a motion can withdraw it by consent of his second; but a motion once debated cannot be withdrawn except by a majority vote.

Rule 7. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

Debate

Rule 8. A motion shall not be subject to debate until it has been stated by the chair.

Rule 9. When a member wishes to speak he shall rise and respectfully address the chair, and if recognized by the chair, he shall be entitled to proceed.

Rule 10. If two or more members rise to speak at the same time the chair shall decide which is entitled to the floor.

321 Rule 11. Each member when speaking shall confine himself to the question under debate, and avoid all personal, indocorous or sarcastic language.

Rule 12. No member shall interrupt another while speaking except to a point of order, and he shall definitely state the point, and the chair shall decide the same without debate.

Rule 13. If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed.

Rule 14. If any member shall feel himself personally aggrieved by a decision of the chair, he may appeal to the body from the decision.

Rule 15. When an appeal is made from the decision of the chair the Vice-President shall then act as chairman; said appeal shall then be stated by the chairman to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Lodge?" The member then will have the right to state the grounds of appeal, and the chair will give reasons for his decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority to sustain an appeal.

Rule 16. No member shall speak more than once on the same subject until all the members desiring the floor shall have spoken, not more than twice without unanimous consent, nor more than five minutes at any one time without consent of a two-thirds vote of all members present.

Rule 17. The presiding officer shall not speak on any subject unless he retires from the chair, except on points of order, and in case of a tie he shall have the casting vote.

Privilege Questions

Rule 18. When a question is before the meeting no motion shall be in order except:

1. To adjourn.
2. To lay on the table.
3. For the previous question.
4. To postpone to a given time.
5. To refer or commit.
6. To amend; and these motions shall have precedence in the order herein arranged. The first three of these motions are not debatable.

Rule 19. If a question has been amended, the question on the amendment has been amended, the question on the amendment has been offered, the question shall then be put as follows:

1. Amendment to the amendment.
2. Amendment.
3. Original proposition.

322 Rule 20. When a question is postponed indefinitely it shall not come up again except by a two-thirds vote.

Rule 21. A motion to adjourn shall always be in order except:

1. When a member has the floor.
2. When members are voting.

Rule 22. Before putting a question to vote the presiding officer shall ask, "Are you ready for the question?" Then it shall be open for debate. If no member rises to speak, the presiding officer shall then put the question in this form: "All in favor of this motion say 'aye';" and after the affirmative vote is expressed: "Those of the contrary opinion say 'no'." After the vote is taken he shall announce the result in this manner: "It seems to be carried (or lost); it is carried (or lost) and so ordered."

Rule 23. Before the presiding officer declares the vote on a question, any member may ask for a division of the house. Then the chair is in duty bound to comply with the request, and a standing vote shall then be taken, and the secretary shall count the same.

Rule 24. When a question has been decided it can be reconsidered by a majority vote of those present.

Rule 25. A motion to reconsider must be made and seconded by two members who voted with the majority.

Rule 26. A member being ordered to take his seat three times by the chair without heeding shall be debarred from participating in any further business at that session.

Rule 27. All questions, unless otherwise provided, shall be decided in accordance with Robert's Rules of Order.

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ARTICLE A

Definitions

A Local Lodge

SECTION 1. A local lodge shall consist of not less than fifteen (15) persons in any locality, qualified for membership and organized as a local lodge under a charter issued by the Grand Lodge of The International Association of Machinists.

A Machinist

SEC. 2. A "machinist" is a person who has served an apprenticeship of four (4) years at the machinists' trade; or a person who has worked for four (4) years at the machinists' trade in any of its branches or subdivisions, and who can, with the aid of tools,

with or without drawings, make, repair, erect, assemble or dismantle machinery or parts thereof.

Automobile and Aircraft Machinists or Mechanics

SEC. 3. An Automobile or Aircraft Machinist or Mechanic is a person who has served an apprenticeship of four (4) years at the Automobile or Aircraft Machinists' or Mechanics' trade; or a person who has worked for four (4) years at the Automobile or Aircraft Machinists' or Mechanics' trade in any of its branches or subdivisions, and who can, with the aid of tools, repair, erect, assemble, dismantle, and maintain Automotive or Aircraft equipment or parts thereof.

A Specialist

SEC. 4. A specialist is a person who is employed in some branch or subdivision of the machinists' trade, or a person who performs some particular line of work commonly recognized as work connected with the machinists' trade or the metal industry.

324 Machinist Helper

SEC. 5. A "machinist helper" is a person employed in the machine or metal industry in any of its branches or subdivisions and assigned to assist a mechanic in the machinists' trade in the performance of his duties and who is competent to command the minimum rate of wages paid in the locality where he is employed.

An Apprentice

SEC. 6. (a) An indentured "apprentice" is a person who, while between sixteen (16) and twenty-one (21) years of age, is engaged to an employer to serve four (4) years in learning the machinists', automobile or aircraft machinists' or mechanics' trade.

(b) A "helper apprentice" is a person who having been a member of a local lodge for at least one (1) year and having worked at least one (1) year as a machinist helper has thereafter, and while under the age of thirty-five (35) years, engaged himself to an employer to serve four (4) years in learning the machinists' trade.

Production Worker

SEC. 7. In the Machinists' craft a production worker is a person employed in the mass production metal industry engaged in repetitive machine work or assembly work, or bench work, requiring less training, experience and skill than that necessary to qualify one as a machinist.

ARTICLE B

Organization of Local Lodges

SECTION 1. Every application for a charter for the organization of a local lodge of The International Association of Machinists must be signed by at least fifteen (15) applicants who possess the qualifications for membership and are working in a locality where there are a sufficient number of machinists, automobile or aircraft machinists or mechanics, specialists, machinist helpers, apprentices and production workers employed to maintain a local lodge.

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Fees

SEC. 2. A fee of not less than five dollars ($5.00) shall be charged to each applicant. A charter fee of not less than twenty-five dollars ($25.00), payable to the Grand Lodge, shall accompany every application for a charter, except in the case of an application for a charter organizing a machinist helpers lodge, when the charter fee shall be not less than fifteen dollars ($15.00). The Grand Lodge is entitled to and shall receive the sum of two dollars ($2.00) from each applicant after the first one hundred (100) charter members are enrolled. Charters may be closed at any time within (30) days, but in no case shall charter members be enrolled after that period.

Form of Application

SEC. 3. Every application for a charter for the organization of a local lodge shall contain the following information: (a) The number of machinists, automobile or aircraft machinists or mechanics, specialists, machinist helpers, apprentices and production workers employed in the locality. (b) The name of each applicant who is a member in good standing of any local lodge, together with his card number and the number of the local lodge to which he belongs. (c) The name of each applicant whose membership has been previously cancelled, together with the number of the local lodge of which he was last a member. (d) The petition and pledge of the applicants in language as follows:

"The undersigned residents of (place) _____ (State) _____ believing The International Association of Machinists to be well calculated to improve our intellectual and social conditions and promote our industrial well-being and advancement, respectfully petition The International Association of Machinists to grant us a charter to open a new lodge, to be located in the (town or city) of _____, county of _____, State of _____. We pledge ourselves individually and collectively to be governed by the Constitution, laws, rules and usages of The International Association of Machinists. The Lodge desires to be recognized as _____ Lodge."

326 Granting Charter

SEC. 4. Every such application for a charter shall be forwarded to the General Secretary-Treasurer, who shall submit the same to the International President. If the application is approved by the International President, he shall cause the charter to be granted and designate a member as the representative of the Grand Lodge to install the officers and instruct the members of such local lodge in the principles, usages, and laws of The International Association of Machinists.

Restrictions

SEC. 5. No application for a charter shall be granted which proposes to separate any local lodge into two or more local lodges unless the application has been approved by a called meeting of the local lodge or lodges in the locality mentioned in the application.

Who May Obtain Charters

SEC. 6. In localities where there are a sufficient number of machinists, die sinkers, die or tool makers, automobile or aircraft machinists or mechanics, specialists, production workers, or machinist helpers employed in any one or more divisions of the trade, separate local lodges may be organized for the benefit of those employed in the respective divisions.

In localities where there are not a sufficient number of machinists, die sinkers, die or tool makers, automobile or aircraft machinists or mechanics, specialists, production workers, or machinist helpers employed in any one or more divisions, a mixed local lodge may be organized, with a membership composed of persons employed in all divisions of the trade.

No local lodge of machinist helpers shall be organized without first obtaining the sanction of the district lodge, or of the local lodge or lodges of that locality, if no district lodge exists.

No local lodge charter shall be granted by the International President in a locality within the jurisdiction of a district
327, lodge, until such district lodge has been consulted, and in the event of failure to reach an agreement, the Executive Council shall be required to render a decision as to whether such charter shall be granted or not.

Membership Cancelled

SEC. 7. Whenever persons whose membership in this Association has been cancelled apply for charter membership in a local lodge in process of organization, it shall be the duty of the Grand Lodge Representative to collect the charter fee from such persons and forward the same, together with their applications, to the General Secretary-Treasurer, who, upon ascertaining that there

are no unpaid fines or assessments against them, shall prepare their reinstatement books and credit the amount paid into the Grand Lodge.

Bylaws

SEC. 8. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the constitution for local lodges of The International Association of Machinists. The proposed by-laws of all local lodges and all amendments thereafter proposed, except as to time and place of meeting, shall be submitted to the International President for examination, correction, and approval before being adopted.

Parliamentary Laws

SEC. 9. The Rules of Order governing parliamentary procedure shall be printed in the copies of the Constitution of the Grand Lodge, and no other rules shall apply.

Meetings and Quorums

SEC. 10. Each local lodge shall hold at least two (2) regular meetings during each month and shall determine how many of its members shall constitute a quorum, provided it be not less than five. Special meetings shall be called by the president upon the written request of ten per cent (10%) of the members of a local lodge, provided, however, that a special meeting shall be called upon the written request of one hundred (100) members, and no special meeting shall be called on the written request of less than ten (10) members, regardless of the total membership of such local lodge.

The call for special meetings of local lodges shall state the purpose of the meeting, and discussion and action at such special meetings shall be confined to the subject for which the meeting was called.

Order of Business

SEC. 11. The order of business for each local lodge shall be as follows:

1. Roll call of officers and noting of absentees.
2. Reading and approval of minutes.
3. Introduction of visiting members.
4. New applications.
5. Report of committees on applications.
6. Initiation.
7. Communications, bills, etc.
8. Report of committees.
9. Report of members out of work and positions vacant.

10. Good and welfare of the Association and discussion of subjects of an economic nature.
11. Unfinished business.
12. New business. Election of officers.
13. Report on sick and disabled members and of Relief Committee.
14. Installation of officers.
15. Report of secretary and treasurer, including receipts and disbursements since the close of the last meeting.

Local Lodge Seal

SEC. 12. Each local lodge shall procure a seal from the General Secretary-Treasurer, which seal shall be made in accordance with the design adopted by the Grand Lodge of The International Association of Machinists. The local lodge seal shall be and remain in the custody of the recording secretary, and no paper, document, or communication issued by the local lodge shall be valid unless it bears the impression of said seal.

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Illegal Use of Seal

SEC. 13. Any officer or member of a local lodge who uses the seal of such lodge for any purpose without permission from the lodge shall be fined, suspended, or expelled, at the option of the local lodge of which he is a member.

Grand Lodge Control Over Property

SEC. 14. In case of the suspension, revocation of the charter, expulsion, lapsing, or disbanding of any local lodge for any cause or reason whatsoever, it shall be the duty of the recording secretary, acting in conjunction with the trustees, to send all funds and property belonging to such local lodge to the General Secretary-Treasurer of the Grand Lodge to be held by him, intact, for a period of at least six (6) months. If within that period application is made therefor by at least fifteen (15) members in good standing in that locality, such local lodge shall, with the approval of the International President and the Executive Council, be reopened and the funds and property returned thereto. And in the event that such local lodge is not reopened, all funds and property shall belong to and become the property of the Grand Lodge.

Funds and Property of Merged Lodges

SEC. 15. Whenever two or more local lodges merge or consolidate, the stamps, funds, and property of such merged lodges shall be sent to the Grand Lodge. After the accounts of the merged lodge or lodges are balanced, such balance as remains shall be returned by Grand Lodge to the local lodge created by such merger, or consolidation.

ARTICLE C

Officers of Local Lodges

SECTION 1. The officers of all local lodges shall consist of a president, a vice president, a recording-secretary, a financial secretary, a treasurer, a conductor, a sentinel, a board of trustees consisting of three (3) members, and a past president who shall be the statistician.

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Terms of Officers

SEC. 2. Officers of newly organized local lodges shall hold office until the first meeting in January following their election, and thereafter the term of office shall be for one year, except that at the first regular election of any local lodge one trustee shall be elected for a term of six (6) months, one for a term of twelve (12) months, and one for a term of eighteen (18) months. Thereafter their successors in office shall be elected for a term of eighteen (18) months, resulting in the election of one trustee every six months. The retiring president shall be the past president and statistician for the ensuing year. In newly organized local lodges, or in the case of a vacancy, the president shall appoint a past president, who shall be the statistician.

Qualifications for Office

SEC. 3. Except at the first regular election of officers of a local lodge, all candidates for any elective office must be members of the local lodge in good standing for at least one year and free from delinquency of any nature to the Grand Lodge or any district or local lodge of The International Association of Machinists.

Further, any officer of a local or district lodge, who shall be found to be indebted to any such local or district lodge by reason of any shortage of any funds, accounts or securities intrusted to him for any purpose or purposes whatsoever, shall immediately forfeit his office and thereafter be permanently disqualified from holding any office within the province of any such local or district lodge of The International Association of Machinists.

Local or District Lodge Elections and Appointment of Tellers

SEC. 4. Whenever a local or district election is held by a referendum and there are more than two candidates contesting for election, the lodge or district may by a majority vote decide in advance that the candidates who receive the highest vote shall be declared elected and in such elections men at outlying points and employed on shifts that prevent their attendance at meeting will be permitted to vote by mail.

331 In all other cases where the voting is done in the lodge room exclusively a majority of all votes cast will be required for a decision and the president in both cases shall appoint three (3) tellers to assist in conducting the election in a fair and impartial manner.

Election of Officers

SEC. 5. Each local lodge, at its first meeting in the month of December shall elect a president, a vice president, a recording secretary, a financial secretary, a treasurer, a conductor, a sentinel, and one member of the board of trustees. Local lodge officers must be citizens of a country included in the territorial jurisdiction of the International Association of Machinists. No member shall hold more than one office.

Installation

SEC. 6. The installation of officers shall take place at the first meeting of the local lodge held in the month of January and after the report of the auditing committee. The ceremony of installation shall be conducted by the past president.

ARTICLE D

Duties of Officers

President

SECTION 1. The president shall preside at all meetings of the local lodge, decide all questions or disputes not controlled by laws of the Association, countersign all orders properly drawn on the treasurer, and all checks properly drawn by the treasurer, and enforce all of the laws of the Association applicable to local lodges and members thereof, appoint all committees not otherwise provided for, and in case of a tie he shall cast the deciding vote. He shall administer the obligation to all new members and perform such other duties as may be required of him by the Constitution of the Grand Lodge and the constitution for local lodges.

332 ### Vice President

SEC. 2. The vice president shall see that all persons entering the lodge room are members in good standing of some local lodge or affiliated with the Grand Lodge of The International Association of Machinists; he shall see that all property of the local lodge has proper care and shall assist the president in maintaining order; he shall preside at all meetings in the absence of the president, and in case of the death, removal, or resignation of the president, the vice president shall become president and serve as such until after the next regular election and installation of his successor in office.

Recording Secretary

SEC. 3. The recording secretary shall conduct all of the correspondence for, and in the name of the local lodge; he shall present all communications and bills to the local lodge and deliver such bills to and for the files of the financial secretary; he shall forward all grievances, draw all orders on the treasurer when passed by the local lodge and attest the same by his signature and by attaching the seal of the local lodge thereto; he shall prepare and sign all credentials of delegates and alternate delegates to conventions of the Grand Lodge and forward duplicates thereof to the General Secretary-Treasurer; he shall have charge of the roll-books furnished by the Grand Lodge and enter therein a complete list of the members of the local lodge, including the respective card numbers and residence addresses of such members; he shall perform such other duties as are required of him by the Constitution of the Grand Lodge and the constitution for local lodges of The International Association of Machinists.

Financial Secretary

SEC. 4. The financial secretary shall collect all dues, fines, assessments, and all moneys from any source for the benefit of the local lodge. Moneys collected by local lodge financial secretaries on behalf of the Grand Lodge, as indicated on monthly reports, shall be used for no other purpose and must accompany the report. He shall keep a systematic account of all disbursements and in such a way as to show the balance of cash on hand at the close of each meeting of the local lodge; he shall have on file all receipted bills, and shall submit his books to the auditing committee of the local lodge at the end of each three (3) months' period; he shall turn over all moneys received by him since the close of the last meeting to the treasurer of the local lodge at the close of each meeting and take the receipt of the treasurer therefor; he shall keep a correct account between the lodge and its members, and shall notify any member who has become two (2) months in arrears. At the end of each month the financial secretary shall prepare a monthly report in duplicate, one of which shall be sent to the General Secretary-Treasurer. The duplicate report shall contain in detail the names, card numbers and amounts paid by all members of the local lodge and designate the months for which such payments were made. He shall remit to the General Secretary-Treasurer an amount equal to the per capita tax called for by the current monthly report. The monthly report shall include a correct statement of the number of members on the books of the local lodge, and shall set forth in detail all additions made and subtractions from the membership roll, together with a list of members who have been expelled and individuals whose applica-

tions have been rejected, with the reasons therefor; he shall receive from the General Secretary-Treasurer due stamps in proportion to the per capita tax paid upon each monthly report. In reporting persons whose membership is cancelled on the rolls, the financial secretary shall state whether there are any unpaid fines or any local lodge or district lodge assessments charged against the person's account. Unless the report states otherwise, the cause for such cancellation of membership shall be considered the non-payment of dues, and they may be again reinstated as provided for in Section 18 of Article F of the constitution for local lodges.

(a) Financial secretaries receiving dues from members working under the jurisdiction of another local lodge shall immediately notify the secretary of the lodge under whose jurisdiction the member is working, with full particulars as to name, card number, etc.

334 Transfers

SEC. 5. When accepting members by transfer, the financial secretary shall enter the date and particulars of such transfer in the member's due book and shall at once notify the General Secretary-Treasurer of such transfer on the official notification of transfer form furnished by the Grand Lodge. If a member of a machinist helpers local transfers and reclassifies as an apprentice in a machinists local, that fact should be stated in the notices provided for in this section. A failure upon the part of any financial secretary to comply with this section shall subject him to a fine of two dollars ($2.00).

Report to the Grand Lodge

SEC. 6. Upon the receipt of reinstatement, or initiation fees, or dues, the financial secretary shall place the regular stamps received from the Grand Lodge for that purpose in the due book of the member making the payment, and shall cancel the stamps with the regulation cancelling stamp, showing date of payment and lodge number. Any financial secretary granting reinstatement books to persons whose membership has been cancelled in other local lodges shall subject his lodge to a fine of two dollars ($2.00) for each offense, which fine shall be payable to the Grand Lodge. The report of the financial secretary shall be signed by the president of the local lodge, bear the impression of the local lodge seal and shall be forwarded to the General Secretary-Treasurer immediately after the close of the month's business. Checks to cover monthly reports of local lodges must accompany the report. Should the monthly report of any financial secretary fail to reach the General Secretary-Treasurer by the tenth (10th) day of the month following the month reported, the local lodge shall be subject to a fine of two dollars ($2.00) for each offense, which

fine shall be payable to the Grand Lodge. Should the report of the financial-secretary fail to reach the General Secretary-Treasurer before the expiration of the month following the month reported, the General Secretary-Treasurer shall thereupon notify the president of such local lodge of its suspension. A bond shall be obtained for the financial secretary through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon.

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District Per Capita Tax

SEC. 7. The financial secretary shall obtain and draw an order on the treasurer of the local lodge at the close of each month for the amount of per capita tax due the district lodge with which such local lodge is affiliated and forward the same to the financial secretary of the district lodge.

Treasurer

SEC. 8. The treasurer shall receive all funds of the local lodge, give his receipt as evidence of the receipt thereof, and deposit the same in a bank of sound financial standing in the name of the local lodge. He shall pay all orders properly drawn on him by check, which checks shall be countersigned by the president of the local lodge. He shall not draw any checks whatever in violation of Section 4 of Article D. A bond shall be obtained for the treasurer through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon.

Conductor

SEC. 9. The conductor shall examine all persons present prior to the opening of all meetings of the local lodge for the purpose of ascertaining whether any are in attendance who are not entitled to remain. He shall report to the president all members present who are in arrears for dues.

Sentinel

SEC. 10. The sentinel shall answer all alarms at the door, report the same, and admit all who are entitled to admission.

Past President and Statistician

SEC. 11. The past president and statistician shall attend all meetings of the local lodge, assist in initiations, instruct new members, and assist in securing a strict observance of all of the laws of the Association. He shall examine all applicants and visiting members as prescribed in the ritual.

336 **Auditors**

SEC. 12. At the last meeting in the months of March, June, September and December of each year, each local lodge shall elect an auditing committee, composed of three (3) members of the local lodge. Officers of the local lodge are not eligible to election as members of the auditing committee. The auditing committee shall immediately after the close of each quarter, proceed with the work of examining the books and accounts of the local lodge for the preceding three (3) months period. They shall call on the financial secretary for the duplicate financial statement, from which they shall proceed to take off a statement of the stamps used during the term they are about to examine, and tabulate the same on forms furnished therefor by the General Secretary-Treasurer.

The auditing committee shall render its report on a blank form furnished for that purpose by the General Secretary-Treasurer, and shall send a copy thereof to the Grand Lodge. The report of the auditing committee must be countersigned by the trustees of the local lodge. Should one or more auditors fail to be in attendance the trustees shall proceed with the work as though all of the auditing committee were present.

Trustees

SEC. 13. The Board of trustees shall have charge of all property belonging to the local lodge; shall see that all of the books are properly kept, and at the expiration of each quarter, shall assist the auditing committee in the examination of all books and accounts and verify the report of the auditing committee by attaching their signatures thereto. Should the work of auditing the books of the local lodge be delayed on account of the failure of one or more of the trustees to be in attendance, the auditors shall proceed to carry on the work in the same manner as though all of the trustees were present. The trustees of each local lodge shall be liable to the Executive Council of the Grand Lodge for all funds and other property of the local lodge under their control. A bond shall be obtained for all trustees who have $200.00 or more under their custody and control through the General
337 Secretary-Treasurer with the bonding and fidelity department of the Grand Lodge as surety thereon.

ARTICLE E

Duties of Local Lodges

Minimum Wage Scales

SECTION 1. Local or district lodges shall establish a minimum scale of wages in their respective localities for members employed as machine erectors, and no member of any local lodge shall accept

work as a machinery erector under the minimum wage established for the locality wherein he is employed.

Local and district lodges may also establish minimum wage rates in their respective localities wherever they are in position to enforce such rates, subject to the approval of the Executive Council.

Economics

SEC. 2. Each local lodge may discuss subjects of political economy under the heading "Good and Welfare," providing such discussion does not occupy more than twenty (20) minutes of the time of the meeting and does not include matters sectarian in religion or partisan in politics.

Legislative Committee

SEC. 3. Each local lodge shall appoint a committee of three (3) members, to be known as the legislative committee, which committee shall assist in securing the enactment of legislation favorable to labor. The legislative committee shall gather information on all such laws enacted, the persons who have favored or opposed the same and from time to time forward such information to the editor of the Machinists' Monthly Journal.

Relief Committee

SEC. 4. The president of each local lodge shall appoint a
338 relief committee, of which he shall be chairman. The relief committee shall receive all moneys drawn for relief benefits and cause the same to be paid to the person for whom drawn within forty-eight (48) hours after receipt of same.

Cooperation of Lodges

SEC. 5. In the cities where more than one local lodge exists, delegates from all such local lodges should meet at least once a month for the purpose of considering matters affecting the welfare of the Association, and shall report the results of such meeting to their respective lodges. Every effort shall be made to secure a harmonious cooperation among the local lodges.

Emergency Funds

SEC. 6. Each local lodge shall set aside a percentage of its dues to be known as an "emergency fund," which fund may be used in case of emergency.

The funds of the local lodge shall not be divided by loan or any other method or to the members individually. Nor shall they be divided between any local lodges whatsoever, unless the approval of the International President and the Executive Council is first obtained.

Voluntary Donations

SEC. 7. No general appeal for financial aid shall be sent out by any local lodge to other local lodges unless the appeal has first been approved and countersigned by the International President. All moneys appropriated for financial aid by one local lodge to another local lodge must be sent to the General Secretary-Treasurer, who will acknowledge receipt of the same in the following monthly financial statement and forward the amount so paid to the local lodge for which appropriation was made.

339 ARTICLE F.

Membership

Eligibility

SECTION 1. Any machinist, automobile or aircraft machinist or mechanic, specialist, machinist helper, helper apprentice, production worker, or any apprentice working in the machine or metal industry may be admitted to membership in a local lodge of The International Association of Machinists upon assuming the obligation and paying the required fee.

Applications for Membership and Investigations

SEC. 2. Every application for membership in a local lodge shall be presented to such lodge in writing by some members thereof, and shall state the name, residence, date and place of birth, occupation, and place of employment of the applicant. If two-thirds (⅔) of those present consent thereto the local lodge may vote upon an application for membership at the same meeting at which the applicant is proposed; otherwise the application for membership shall be referred to a committee of three (3) members, two (2) of whom shall be appointed by the president and one of whom shall be appointed by the vice president. The committee shall investigate the eligibility of the applicant and report thereon at the next regular meeting of the local lodge, whereupon a yea and nay vote will be taken upon the question of the admission of the applicant to membership. A two-thirds (⅔) vote of those voting on the question shall be necessary to elect the applicant to membership. An applicant once rejected shall not again be voted on until after the expiration of six (6) months.

Nonresident Applicants

SEC. 3. Each applicant for membership in a local lodge shall be interrogated to ascertain the place from whence he came. If it appears that he is not a resident of the place wherein the

340 local lodge is located, the recording secretary shall communicate with the local lodge of the locality where the applicant was last employed for the purpose of ascertaining the applicant's standing in that community, and the application shall not be voted upon until after a report has been received from the local lodge communicated with.

Initiation Fees

SEC. 4. The minimum initiation fees for all local lodges shall be as follows: for journeymen machinists, automobile or air craft machinists or mechanics and specialists not less than five dollars ($5.00); for machinists' helpers and production workers not less than three dollars ($3.00); for apprentices not less than half the fee paid by journeymen machinists throughout the jurisdiction of The International Association of Machinists.

Forfeiture of Fees

SEC. 5. Any person elected to membership in a local lodge and who fails to appear for initiation within the period of four (4) weeks next following his election shall forfeit all right to be initiated and the fees theretofore paid by him unless a satisfactory reason for his failure to appear is duly received and accepted by the local lodge.

Universal Transfers

SEC. 6. Any member of a foreign metal trades union or any member of a trade union affiliated with the American Federation of Labor, who accepts employment under the jurisdiction of The International Association of Machinists, shall, upon application for membership and the presentation of his due book or other evidence of his good standing membership in such union and upon payment of three months dues in advance, shall be initiated into a local lodge of The International Association of Machinists and invested with full membership therein free of cost. All such due books or other evidence of good standing membership of such an applicant shall be forwarded to the General Secretary-Treasury, who shall issue a due book of this Association in exchange therefor. Any member of a local lodge who secures
341 employment within the jurisdiction of any other trade union affiliated with the American Federation of Labor and who is thereby required to become a member of such other trade union may retain his membership in a local lodge of The International Association of Machinists by paying such reduced rates of dues as may be stipulated by the local lodge of which he is a member. Such local lodge shall, however, pay full per capita tax to the Grand Lodge on all such members.

Obligation by Request

SEC. 7. A candidate elected in one local lodge may be initiated in another local lodge, but good and sufficient reasons must be given in writing to the local lodge in which the candidate was elected before said lodge can grant permission for his initiation in another lodge. The permission herein referred to shall be in writing, signed by the secretary and president and attested by the seal of the lodge by which he was elected, and addressed to the local lodge wherein he is to be initiated.

Local Lodge Dues

SEC. 8. The minimum monthly dues to be paid by members of all local lodges shall be as follows: machinists, automobile or aircraft machinists or mechanics, and specialists shall pay not less than one dollar and seventy-five cents ($1.75) per month dues, apprentices shall pay not less than one-half (½) rate, helpers and production workers not less than two-thirds (⅔) rate of dues paid by machinists.

Upon payment of dues each member shall receive a due stamp from the financial secretary as a receipt for each month's dues so paid, which stamp shall be affixed in the due book of the member and cancelled by the financial secretary as provided in Section 6 of Article D of this Constitution, and in no case shall the salaries of local lodge officers be paid by due stamps, but all such payments shall be made by cheque.

Misrepresentation

SEC. 9. Any member of a local lodge who falsely represents himself to be a competent workman shall be fined or
342 expelled at the discretion of the local lodge of which he is a member.

Commencement of Membership

SEC. 10. When a member is initiated or a person whose membership has been cancelled is reinstated to membership his initiation or reinstatement stamp shall be placed in his due book in the square for the month in which he is initiated or reinstated and his dues shall begin the month following. His good standing membership shall date from the date of his initiation or last reinstatement to membership, the date of which shall be recorded in his due book.

Due Books

SEC. 11. Every member of a local lodge of The International Association of Machinists shall have a due book, which shall bear a number designated by the Grand Lodge and shall be furnished

free of charge by the financial secretary of the lodge of which he is a member. The financial secretary shall purchase all due books from the General Secretary-Treasurer.

Machinists helpers shall be provided with a special due book with the words "Machinist Helper" printed thereon. All due books shall contain spaces for the affixing and cancellation of stamps, forms for the record of the payment of assessments and for noting transfers. Such due books shall contain a blank form for the description and identification of the owner, a blank for his signature, a designation of the branch of the trade in which he is most proficient, and a page containing a statement of Grand Lodge benefits.

The due book when properly stamped and bearing the seal of the local lodge shall serve all purposes for the identification of the owner and shall be received as evidence of his standing in The International Association of Machinists.

Lost Due Books

SEC. 12. Upon receiving a fee of twenty-five (25) cents and satisfactory proof that the due book of any member
343 has been lost, the financial secretary of the local lodge shall prepare an application for a new due book and forward the same, together with the fee of twenty-five (25) cents to the General Secretary-Treasurer, who, upon receipt thereof shall furnish a due book to replace the one so lost.

Transfers

SEC. 13. Any good standing member of a local lodge may transfer to any other local lodge. No accounting of arrearage dues shall be required between local lodges, but all district and local lodge assessments then due shall be collected and forwarded to the district or local lodge which levied the assessment. Should a due book be presented for the transfer of a member with one or more month's dues paid in advance, the owner of such book shall be entitled to transfer in regular form and the advanced dues shall remain the property of the lodge of which he was formerly a member. A member presenting his due book as prescribed herein shall at once become a member of the local lodge to which he transfers.

Visting Members

SEC. 14. A member of a local lodge upon visiting another local lodge shall be admitted upon passing a satisfactory examination.

Identification of Letters Illegal

SEC. 15. No letter or paper of identification other than the regular due book herein provided for shall be issued by any

financial secretary or other officer of a local lodge to any member of such lodge except for the purpose of showing the standing of such member on the books of the local lodge or in reply to an inquiry received from some other local lodge under the seal of such lodge.

Reinstatement

SEC. 16. Any person whose membership has been cancelled may be reinstated to membership, but the application for reinstatement,

be reinstated to membership, but the application for re-
344 instatement must be made to the lodge under whose jurisdiction the applicant is working and the regular reinstatement fee of such lodge must be paid.

If the application for reinstatement is filed in the local lodge wherein the applicant's original membership was canceled and the application is approved, said lodge shall immediately issue a reinstatement book containing a reinstatement stamp properly canceled, which transaction shall be entered on the monthly report of said local lodge in the same manner as initiations are entered.

If the application for reinstatement is filed in a local lodge other than that by which the applicant's membership was canceled, then the application, after having been approved by the local lodge receiving the same, shall be forwarded by the financial secretary of said lodge, together with a fee of two dollars ($2.00), to the General Secretary-Treasurer. Upon receipt of said application the General Secretary-Treasurer will issue a reinstatement book containing a reinstatement stamp properly canceled, and forward same to the financial secretary of the local lodge from which the application was received, and shall thereupon transfer the reinstated member to such lodge and notify the local lodge wherein the applicant's previous membership was canceled.

If the membership of the person applying for reinstatement was canceled for cause other than nonpayment of dues or if there are any unpaid fines, or local, district, or Grand Lodge assessments charged against him, his reinstatement shall not be effected, nor shall his due book be issued until said causes are removed and the fines and assessments are either remitted or paid in full. All applications for reinstatement shall take the usual course, except that it shall require a two-thirds (⅔) vote to reject an application for reinstatement. The foregoing provisions shall not apply to persons whose membership was canceled in lapsed, suspended, expelled or disbanded lodges. All such persons whose membership has been canceled shall be reinstated as provided in Section 2, Article J, of this constitution.

Dispensation

SEC. 17. The Executive Council shall have the authority to grant a special dispensation reducing initiation and rein-

345 statement fees for special cases where organizing activities are in progress or are contemplated, for such periods of time as may be determined by them.

Rejected Applications and Expulsions

SEC. 18. Each local lodge shall keep a correct list of all persons whose membership has been canceled and all applications that have been rejected, for future reference. Expelled persons and rejected applicants cannot again apply for membership until after the expiration of six (6) months from the date of said expulsion or rejection.

ARTICLE 6

Apprentices

SECTION 1. Any person engaging himself to learn the machinist trade shall serve an apprenticeship of four (4) years. Any person engaging himself to learn the automobile or aircraft machinists or mechanics trade shall also serve an apprenticeship of four (4) years. An apprentice shall not leave the employer to whom he has engaged himself without just cause and then only after securing the consent of the lodge of which he is a member. Any apprentice failing to comply with this provision shall stand suspended from any and all benefits of the Grand Lodge and local lodge until he returns to his employer. Failure to return to his employer within three (3) months shall be sufficient cause for his expulsion.

The ratio of apprentices shall be not more than one (1) apprentice for every ten (10) journeymen machinists employed. No person shall engage himself as an apprentice until he has reached the age of sixteen (16) year, and no person shall engage himself as an apprentice after he has reached the age of twenty-one (21) years; except that any person who has been a member of one (1) year's continuous good standing in a local lodge and has worked as a machinist helper for one (1) year in the shop where he desires to become an apprentice, may if he is not at that time past the age of thirty-five (35) years, engage himself to his employer as an apprentice. Such a person shall be known as a
346 "helper-apprentice" and shall serve four (4) years in learning the machinist trade, during which time he shall be governed by the rules and laws applicable to apprentices. The number of helper-apprentices shall at no time exceed the number of regular indentured apprentices in any shop.

Eligible to Membership

SEC. 2. Any apprentice at the trade is eligible to membership in a local lodge upon paying one-half (½) of the regular initiation

fee and one-half (½) of the regular dues charged against machinists in such lodge. He shall thereafter be entitled to benefits at the rate of one-half (½) of the benefits allowed machinists.

SEC. 3. Any machinist's helper who engages himself to an employer as an apprentice shall within five (5) days thereafter present his due book to the financial secretary of a local lodge having jurisdiction over the machinists in the shop wherein he is employed. The financial secretary shall immediately thereafter forward such due book to the General Secretary-Treasurer, who shall re-classify the member as an apprentice and forward to the financial secretary a proper due book in exchange.

Completion of Apprenticeship

SEC. 4. All apprentices upon the completion of their apprenticeship shall receive not less than the minimum rate of pay for machinists or automobile or aircraft machinists or mechanics in the locality where they are employed and shall thereafter pay full dues and assessments and be entitled to full benefits as members of their respective local lodges.

ARTICLE H

Duties of Members

Minimum Rate

SECTION 1. No member of any local lodge shall be allowed to start to work for wages less than the rate paid to his class.
347 Should any member vacate a position paying more than the minimum rate paid to his class, any other member who takes his place shall receive the same rate within thirty (30) days thereafter.

Going To Work in Other Localities

SEC. 2. Members of local lodges shall report to the financial secretary, business agent or shop committee before accepting employment within the jurisdiction of any other local lodge. Within five (5) days after commencing work in the new jurisdiction such members shall transfer to the local lodge having jurisdiction over the shop in which he is employed and shall have his transfer properly recorded in his due book.

Jurisdiction of Lodges

SEC. 3. In all cities where railroad, contract, automobile, and tool and die makers lodges exist, machinists must become members of the local lodge having jurisdiction over the class of work in which they are employed, provided that said local lodge has a contract or agreement with the employer covering the men claimed.

Declining Rough Work

SEC. 4. Any member of a local lodge who refuses to do any kind of work belonging to the trade because it is rough or dirty shall be subject to fine or expulsion.

Overtime

SEC. 5. Members of local lodges shall discourage the working of overtime.

Piecework, Two Machines and Premium Systems

SEC. 6. In shops where it is not now a practice no member of a local lodge is permitted to accept piecework, operate more than one machine, or accept employment under the premium, merit, task, or contract systems. Members found guilty of advo-
348 cating or encouraging any of these systems in shops where they are not now in operation shall be liable to expulsion.

Introduction of Unqualified Persons

SEC. 7. Any member of a local lodge who introduces into the trade any person other than a member of this Association, shall be heavily fined for the first offense and expelled for the second offense. This section shall not be construed to refer to apprentices properly indentured.

Inebriety

SEC. 8. Any person entering the local lodge room while under the influence of intoxicating drinks, or who is guilty of using indecent or profane language therein, shall be reprimanded, fined, suspended or expelled, at the option of the local lodge. Habitual drunkenness or conduct disgraceful to himself or associates shall be punished by expulsion.

Honorary Retiring Cards

SEC. 9. Any member of a local lodge who has been appointed a general foreman or a superintendent or who obtains employment outside of the trade or industry may either be transferred to affiliation directly with the Grand Lodge or may be furnished with a retiring card. No application for a retiring card shall be granted until all fines, dues and assessments charged against the applicant have been paid in full. Persons holding retiring cards shall not violate any of the laws or decisions of the Grand Lodge or any local or district lodge. Persons withdrawing their membership by accepting retiring cards shall not be entitled to any benefits, or permitted to attend meetings or participate in any of the business of the Association. All retiring cards shall be

furnished by the Grand Lodge, signed by the President and Financial Secretary, and bear the seal of the local lodge granting the same. Retiring cards shall not be issued to individuals who are actually working in the trade or industry and eligible to active membership in a local lodge, except to those members who have enlisted as machinists in the army, navy or marine
349 corps, and then only upon complying with the conditions herein set forth.

Deposit of Retiring Cards

SEC. 10. Any person holding a retiring card who again obtains employment within the trade or industry and thereby becomes eligible to active membership, shall, within five (5) days after obtaining such employment, deposit his retiring card with the local lodge having jurisdiction over the place where he is employed, which will be accepted in lieu of a reinstatement fee. The local lodge receiving the retiring card shall send the same to the General Secretary-Treasurer, who will issue a due book in exchange therefor as a reinstated member. Whenever any person holding a retiring card accepts employment and fails to deposit the same as herein provided for, the president of any local lodge shall cancel such retiring card and immediately notify the General Secretary-Treasurer of his action.

Whenever a retiring card is deposited in a local lodge a membership application form, properly filled out, shall be filed for the purpose of record.

ARTICLE I

Assessments

How Levied

SECTION 1. In case of emergency local lodges may levy assessments on all members under their jurisdiction. No special assessment can be levied until the same has been approved by a two-thirds (⅔) vote of the members of the local lodge attending a summoned meeting, notice of which has been served in writing on each member, by mail or otherwise, at least seven (7) days before the date of the meeting. Every member present at such meeting shall vote unless excused by the president, and those not voting shall be recorded as voting in favor of the assessment.

SEC. 2. All assessments and fines shall be due within thirty (30) days after levied. If not paid within that time the fi-
350 nancial secretary shall notify those in arrears in writing, and should they fail to make payment, within sixty (60) days from the date of such written notice, their membership shall be cancelled regardless of the date to which their dues are paid.

ARTICLE J

Individual Affiliations With the Grand Lodge

SECTION 1. In localities where there is not a sufficient number of machinists, automobile or aircraft machinists or mechanics, specialists, helpers, apprentices, and production workers employed to organize a local lodge, the Grand Lodge shall issue due books affiliating those eligible to membership directly with the Grand Lodge, as provided for in Section 1, Article XX, of the Grand Lodge Constitution. Such members may transfer to the nearest local lodge in accordance with the provisions of Section 2, Article H, of the constitution of local lodges. The local lodge receiving such a member shall notify the General Secretary-Treasurer who shall record the transfer.

Grand Lodge Reinstatements

SEC. 2. All persons whose membership was cancelled in lapsed, expelled, suspended, or disbanded local lodges working in a locality where a local lodge exists may be reinstated by the Grand Lodge upon making application therefor and paying the reinstatement fee charged by the nearest local lodge, which fee shall not be less than five dollars ($5.00). The local lodge shall forward the application for reinstatement together with the Grand Lodge reinstatement fee of $2.00, and the balance of the reinstatement fee, if any, shall belong to the local lodge.

ARTICLE K

Code

SECTION 1. It is the duty of any member who has information of the violation of any provisions of the Constitution of the Grand Lodge or the constitution of local lodges, by any member
351 or members, to immediately prefer charges in writing against such member or members by filing same with the president of the local lodge to which the accused member or members belong, who shall supply a copy of the same to the member against whom the charges are preferred and turn over the original charges to the committee provided for by the following section:

SEC. 2. Whenever charges have been preferred against a member of a local lodge the president of such lodge shall immediately appoint a committee to investigate the charges, take testimony, and decide upon the guilt or innocense of the one accused. The committee so appointed shall within one week thereafter notify the member against whom the charges have been preferred as to the time and place, when and where, to appear for trial.

SEC. 3. The accused shall have the privilege, either in person or by attorney (the attorney being a member of a local lodge) to cross-examine all witnesses appearing for the prosecution and present all such evidence as he may deem proper in his own behalf. The committee shall consider all of the evidence in the case and thereafter agree upon its verdict of guilty or not guilty. If the verdict be that of guilty the committee shall then consider and agree upon its recommendations of punishment.

SEC. 4. If a member of a local lodge fails to appear for trial when notified so to do, the trial shall proceed as though he were in fact present.

SEC. 5. The trial committee shall report its findings at the next regular meeting of the local lodge. The report of the trial committee shall contain a synopsis of the evidence introduced at the trial together with its verdict. If the verdict is "guilty" the report shall set forth the recommendation of the committee as to the punishment to be imposed.

SEC. 6. Upon receiving the report of the trial committee and after due consideration thereof, the question of the guilt or innocence of the defendant shall be submitted to a vote by secret ballot of the local lodge. If a majority of those voting on the question vote in favor of a verdict of "guilty" then the question of accepting or rejecting the recommendation of the trial committee as to the punishment of the defendant shall be submitted to a vote by secret ballot of the members of the local lodge in attendance. The recommendation of the committee may be
352 amended, rejected, or another punishment substituted, therefor by a majority vote of those voting on the question, except that it shall require a two-third (⅔) vote of those voting to expel the defendant from membership.

Limit of Fines

SEC. 7. No fine shall be imposed upon any member or applicant eligible to membership in this Association in excess of fifty dollars ($50.00) unless the same is first approved by the Executive Council.

Appeals

SEC. 8. Appeals may be taken from the decision of any local lodge or Grand Lodge Officer to the International President, and thereafter appeals may be prosecuted in accordance with the provisions of Section 6, of Article XXI of the Grand Lodge Constitution.

Rights of Members and Lodges During Appeal

SEC. 9. While any member or local lodge is exercising the right of appeal the financial standing of such member or local lodge shall not be impaired by refusal to accept dues or per capita tax

until after the Executive Council has passed upon the appeal. Should any member or local lodge decide to appeal from the decision of the Executive Council they must comply with the provisions of Section 6 of Article XXI of the Grand Lodge Constitution. No individual member or local lodge shall appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution and the Constitution of the Grand Lodge.

GEO. H. PEDERSEN, *Chairman*,
GEO. E. WRIGHT, *Secretary*,
F. L. BARTLETT,
B. L. RINEHART,
JOHN GROSS,
Committee on Law, 1941.
H. W. BROWN,
International President

Attest:
E. C. DAVISON,
General Secretary-Treasurer.

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363 Amendments Voted January, 1942, Effective April 1, 1942

Salary of International President

Amend Section 8, Article III, line 27, by canceling the figures "$7,500" and inserting the figures, "$8,540".

Salary of General Vice Presidents

Amend Section 6 of Article IV, line 7, by canceling the figures, "$4,500" and inserting the figures, "$5,540"; also by inserting after line 7, the following:

"The General Vice President assigned to Grand Lodge Headquarters shall receive a salary of $6,580, payable in fifty-two (52) equal weekly installments."

Salary of General Secretary-Treasurer

Amend Section 8, Article V, line 18, by canceling the figures, "$6,500" and inserting the figures, "$7,540".

Salary of Assistant General Secretary-Treasurer

Amend Section 9, Article V, line 26, by canceling the figures, "$3,600" and inserting the figures, "$4,380".

Salary of Grand Lodge Auditors

Amend Section 11, Article V, line 3, by canceling the figures, "$3,600" and inserting the figures, "$4,120".

Salary of Editor of Machinists' Monthly Journal

Amend Section 5, Article VI, line 24, by canceling the figures, "$4,500" and inserting the figures, "$5,540".

Salary of Grand Lodge Representatives

Amend Section 1, Article VIII, line 31, by canceling the figures, "$3,600" and inserting the figures, "$4,120".

364 UNION LABEL OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

All articles upon which this label appears are manufactured by members of the International Association of Machinists.

365 AFFILIATIONS

American Federation of Labor.
Canadian Trades and Labor Congress.
Railway Employes Department of American Federation of Labor.

Metal Trades Department of American Federation of Labor.
Label Trades Department of American Federation of Labor.
Railway Labor Executives Association.

367 *Petitioners' Exhibit 2*

INTERNATIONAL ASSOCIATION OF MACHINISTS LOCAL LODGE NO. 1683 CHARTER

To whom it may concern: Whereas a petition has been received from

Charles Alsman
Chris O. Beider
Ernest Brunson
Earl Chew
Clark Corya
J. Chas. Cutrell
Earl Dugan
Ernest Elliott
Samuel R. Flynn
Otis L. Forbes
Richard French
Leland Haines
Homer Hill
George Logeman
Harry Ludlum
Paul E. Miller
Lawrence Myers
Wm. Patrick O'Day
Fred F. Perkins
Mendes C. Peters
Ralph Ratliff
A. M. Smith
Paul F. Steiner
Michael Temple
Harvey Terrell
Frank Wilson
C. A. Bartlett
Wm. L. Blackmore
Boner Caldwell
Roy Conrad
Carta Crismore
Earl L. Davis
Earl Eggleton
Edward Farrell
Carl Fohl
Earl L. Ford
Henry Haehl
Carl Haskell
Harry S. Hutson, Sr.
Orville Lucas
Noah Lyons
Harry M. Minner
Ira O. McClain
Geo. R. Owens
Elmer Perry
Harry Ralston
Clifford Scholl
Vane Southwood
Ernest Stigall
Ollie Tennell
Glen B. Vore

praying to be chartered as a subordinate lodge under the name of Plant Protection Lodge No. 1683, to be located at Indianapolis, State of Indiana.

Know ye that acting under the authority vested in us by the Grand Lodge of the Order of the International Association of Machinists, we do hereby grant this charter to be issued to the Petitioners named and their associates and successors under the title above named; to bear date March 29, 1943, and by virtue of this instrument the said Lodge is hereby authorized to act and enjoy all the privileges of the Laws of the Order.

The Grand Lodge reserves the right to suspend and reclaim this Warrant and Charter, and to annul the rights and privileges herein conferred for any neglect or refusal to conform to the Laws and Usages of this Order.

In witness whereof, we hereunto affix our names and Seal this 2nd day of April, 1943.

[SEAL]

(S) H. W. BROWN,
International President.
(S) E. C. DAVISON,
Gen. Sec.-Treas.

369 Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH AMERICAN FEDERATION OF LABOR

ROOM NUMBER 216, FEDERAL BUILDING,
INDIANAPOLIS, INDIANA,
Monday, January 31, 1944.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a. m., c. w. t.

Before CHARLES E. PERSONS, Trial Examiner.

Appearances: Messrs. Thomas E. Shroyer and Allen Sinsheimer, Jr., for the National Labor Relations Board, 443 U. S. P. O. and Court House, Cincinnati, Ohio; Messrs. Kurt F. Pantzer and Lewis D. Spencer, 1313 Merchants Bank Building, Indianapolis, Indiana, appearing on behalf of the Respondent; Messrs. E. M. Richardson, Business Agent, Carl Cedarquist, Grand Lodge Representative, William J. Layton, Business Agent, 491½
370 South Delaware Street, Indianapolis, Indiana; and Mr. Van B. Carter, Business Agent, International Association of Machinists, Broadway Hotel, Cincinnati, Ohio; all appearing on behalf of the International Association of Machinists, District Number 90, and their affiliate Local Lodge 1683.

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PROCEEDINGS

Trial Examiner PERSONS. This is a formal hearing before the National Labor Relations Board in the matter of E. C. Atkins and Company and International Association of Machinists, District 50, and their affiliate Local 1683, also affiliated with the American Federation of Labor. The case is known in the Board's system of numbering as Number 9–C–1982.

The name of the Trial Examiner appearing for the National Labor Relations Board is Charles E. Persons, of Washington, D. C.

Counsel will please state all appearances for the record.

For the Board?

Mr. SINSHEIMER. Allen Sinsheimer, Junior, and Thomas E. Shroyer.

Trial Examiner PERSONS. For the Respondent?

Mr. PANTZER. Kurt F. Pantzer, and Lewis D. Spencer for the Respondent, E. C. Atkins and Company.

Trial Examiner PERSONS. You might just give your address in the record also, please.

Mr. PANTZER. 1313 Merchants Bank Building, Indianapolis 4, Indiana.

Trial Examiner PERSONS. For the Machinists?

Mr. CARTER. Van B. Carter, Broadway Hotel, Cincinnati,
373 Ohio.

Mr. RICHARDSON. F. M. Richardson, 491½ South Delaware Street, Indianapolis 4, Indiana.

Mr. CEDARQUIST. Carl Cedarquist, Grand Lodge Representative, 491½ South Delaware Street, Indianapolis 4, Indiana.

Mr. LAYTON. William J. Layton, Business Agent, Machinists, 491½ South Delaware Street, Indianapolis 4, Indiana.

Trial Examiner PERSONS. I take it, Mr. Hise, that you have all the official titles?

(The reporter replied in the affirmative.)

Mr. CEDARQUIST. Mr. Trial Examiner, may I make a correction there—that is, District 90 instead of District 50.

Mr. PANTZER. What is the correction?

Trial Examiner PERSONS. I gave "District 50" instead of "District 90" purely as my own mistake. The correct number is District 90 and it is so stated on the complaint and this is purely a verbal error on the part of the Trial Examiner, and this explanation is to correct the matter in the record.

I have certain announcements which I am sure you all have heard. Will it be sufficient for the record if these things appear in the record without my actually reading the statement,
374 or would you prefer that I read it into the record?

Mr. PANTZER. I have no desire to take the Examiner's time. I am familiar with the statement.

Trial Examiner PERSONS. I am sure all the representatives are and if there will be no objection, that statement will be entered into the record by reference at this point and Mr. Hise will take care of that matter herein.

The official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner.

In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his motion, order certain corrections made.

If the parties have been unable to agree upon such
475 corrections before the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing, but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board the Trial Examiner's connection with the case ceases.

Since this is a formal hearing, we shall maintain the dignity and decorum which usually accompany judicial proceedings.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go "off the record" for the purpose of hearing extended argument. Off-the-record discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

476 Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

All exhibits offered in evidence shall be in duplicate.

At the close of the hearing the parties may, if they so request, argue orally before the Trial Examiner, or at such time, if the Trial Examiner believes that oral argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved, will request oral argument from the parties, and will feel free to discuss with and ask questions of the counsel or representatives of the parties with respect to their contentions as to the issues, the facts, and the legal principles involved.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, who, before closing the hearing, will then indicate the time in which, from the close of the hearing, such briefs may be filed.

Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner, in Washington.

Mr. Sinsheimer, you may now put in the formal papers.

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit 101–A, the Complaint issued on January 12, 1944, by Rosemary S. Macke, Acting Regional Director, Ninth Region,
377 together with the attached Notice of Hearing dated January 12, 1944, signed by Rosemary S. Macke, Acting Regional Director, together with a copy of the charge filed by the International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, dated on the 22d of December 1943:

(Thereupon the document above referred to was marked "Board's Exhibit No. 101–A" for identification.)

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 101–B, Affidavit as to Service of a Complaint and Notice of Hearing, and a copy of the charge on E. C. Atkins and Company and the International Association of Machinists, District 90, and their affiliate Local 1683, signed by Bertie Workman, on January 13, 1944, together with attached return receipts showing service thereof.

(Thereupon the document above referred to was marked "Board's Exhibit No. 101–B" for identification.)

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit 101–C, Order Granting Motion, of Respondent for extension of time to January 29, 1944, for the purpose of filing its answer.

(Thereupon the document above referred to was marked "Board's Exhibit No. 101–C" for identification.)

378 Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 101–D, Affidavit as to Service of Order Granting Motion, together with attached return receipts showing the service thereof.

(Thereupon the document above referred to was marked "Board's Exhibit No. 101–D" for identification.)

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 101–E, Answer of Respondent, E. C. Atkins and Company, received on January 28, 1944——

Mr. PANTZER. Mr. Sinsheimer, may we have a statement for the record that that answer was received within the time for which the filing date was extended?

Mr. SINSHEIMER. Yes; I will agree to that.

Mr. PANTZER. Thank you.

(Thereupon the document above referred to was marked "Board's Exhibit No. 101–E" for identification.)

Mr. SINSHEIMER. Do the parties wish to examine any of these?

Mr. PANTZER. Yes; if you please.

(Documents handed to Mr. Pantzer.)

Mr. PANTZER. No objection.

Mr. SINSHEIMER. I now offer Board's Exhibits 101-A, 101-B, 101-C, 101-D, and 101-E in evidence.

379 Trial Examiner PERSONS. There being no objection, the documents will be received and placed in evidence as a part of this record, as Board's Exhibits Numbers 101-A through 101-E, inclusive.

(The documents heretofore marked "Board's Exhibits Nos. 101-A through 101-E" inclusive, for identification, were received in evidence.)

Mr. SINSHEIMER. At this time I will ask the Examiner if we might go off the record?

Trial Examiner PERSONS. Can you tell us how long it will be?

Mr. SINSHEIMER. Well, I don't know, but I would like to discuss a few matters with counsel.

Trial Examiner PERSONS. All right, off the record. (Discussion had off the record.)

Trial Examiner PERSONS. On the record, please.

Mr. PANTZER. May I be permitted to interrupt Mr. Sinsheimer in order to present to the Trial Examiner the original copy of an application for subpoena duces tecum directed at Mr. S. M. Richardson, to produce certain union records, a copy of which I have left with Mr. Sinsheimer, and another copy of which I have left with the representatives of the union over here (indicating) at the Union table.

Is your Honor prepared to rule upon the application for subpoena duces tecum at this time?

389 Trial Examiner PERSONS. Upon first examination, Mr. Pantzer, it appears to me that this subpoena duces tecum is aimed at things which naturally come up in "R" proceedings. Now, I understand we have already had the "R" proceedings in this particular case—am I correct in that?

Mr. PANTZER. Yes; we have had the "R" proceedings.

Mr. SINSHEIMER. I would like it to be noted in the record that the Board is objecting to all matters called for in the subpoena duces tecum expecting the Charter and By-laws of the Union and as to those I do not know whether Mr. Pantzer wants those produced or not.

Mr. PANTZER. Well, if the Charter, Constitution and By-laws, as produced at the representation case, may be considered as being in evidence in this case, which I take it will be so stated in the stipulation which Mr. Sinsheimer and I are about to enter, in this case, then there is no need to have a subpoena duces tecum directed at further production of those particular documents and I hereby withdraw, for the purposes of this record, Item Number 1 of the application just handed to the Trial Examiner entitled "Charter, Constitution and By-laws of the Union."

Mr. SINSHEIMER. We will agree that they will be introduced, or agree that they are in this hearing.

Trial Examiner PERSONS. Were they made a part of the record of the previous proceedings?

381 Mr. SINSHEIMER. That is correct.

Trial Examiner PERSONS. Well, in the event these proceedings should find their way into the Circuit Court, they would become, by the language of the Act itself, a part of the record there.

Mr. PANTZER. That is right.

Mr. SINSHEIMER. As to the other matters called for in the subpoena duces tecum, the Board is objecting to?

Mr. PANTZER. May I, Mr. Examiner, have the application marked Respondent's Exhibit Number 1 for the purpose of identification—I am wondering, in order to avoid confusion with the record in the previous case, whether or not we might be permitted to number our exhibits in this case alphabetically, because I do anticipate this case will go to the Circuit Court and it will avoid a great deal of confusion in the matter of like-numbered exhibits?

Trial Examiner PERSONS. May I ask if a similar request was presented in the "R" proceeding?

Mr. PANTZER. Yes; a similar request was made in the "R" proceeding—the chief difference between the "R" proceedings and this proceeding being the inclusion of the collective bargaining agreements and copies of the grievances and seniority lists referred to in the request and the inclusion of the request and the inclusion of Paragraph F of the reasons for the requests in the pres-

382 ent document, those items not having appearing in the application which was submitted in the representation case.

Trial Examiner PERSONS. The request of the respondent as to the numbering of those exhibits will be at this time denied. I think it might well be a part of the record, but we cannot interfere with the official reporter's instructions as to how these exhibits shall be numbered. That is covered, is it not, Mr. Hise, by your instructions?

The REPORTER. Yes; your Honor.

Trial Examiner PERSONS. It is stipulated between the parties to avoid confusion between the numbering of exhibits in this "C" proceedings and those exhibits previously numbered in the "R" proceeding—that the numbering of the exhibits in the case of both these respondents and the Board, will start with number 100——

Mr. PANTZER. With 101, if you please, sir.

Trial Examiner PERSONS. Yes; number 101—do you so agree?

Mr. SINSHEIMER. We agree to that.

Mr. PANTZER. And we do too. Thank you, your Honor.

(Thereupon, the document above referred to was marked "Respondent's Exhibit No. 101" for identification and received in evidence.)

Trial Examiner PERSONS. And the Machinists?

Mr. CARTER. Yes.

Mr. CEDARQUIST. Yes: we agree.

383 Mr. SINSHEIMER. The Board now requests that its previous exhibits placed into the record be corrected to read Board's Exhibit numbers 101-A through 101-E inclusive.

Trial Examiner PERSONS. Yes; Mr. Hise will so correct the numbering of the exhibits accordingly.

Mr. SINSHEIMER. I now propose to read a stipulation into the record:

It is hereby stipulated and agreed as follows:

That the entire record in the matter of E. C. Atkins and Company, and International Association of Machinists, District 90, and their affiliate Local 1683, Case number 9-R-1200, be incorporated herein by reference and considered as if a part hereof specifically involving thereby, but not in any way limiting generally in the foregoing:

(1) All exhibits therein:

(2) The entire official report of the proceedings of the hearing of that case on September 24, 1943:

(3) Brief of E. C. Atkins and Company filed therein:

(4) Decision and Direction of Election of the National Labor Relations Board in said matter dated October 19, 1943:

(5) Petition of E. C. Atkins and Company dated October 28, 1943, asking reconsideration of the said Decision and Direction of Election of October 19, 1943:

(6) Order Denying Petition dated November 2, 1943:

384 (7) Report of Acting Regional Director on Order of Election, dated November 18, 1943:

(8) Affidavit as to Service thereof:

(9) Certification of Representatives dated November 29, 1943:

Now, is that statement agreed to, Mr. Pantzer?

Mr. PANTZER. Yes; I so stipulate.

Mr. SINSHEIMER. Does the Union stipulate to that statement?

Mr. RICHARDSON. Yes; we so stipulate.

Trial Examiner PERSONS. Does the Board so stipulate?

Mr. SINSHEIMER. The Board so stipulates.

Mr. PANTZER. Now, I should like to ask Mr. Sinsheimer, inasmuch as the brief which was transmitted to the Board under date of October 9, 1943, is a part of the record, and inasmuch as that brief itself did not contain a request for oral argument—whether he will stipulate that the Board make a part of the record the original letter from myself, Kurt F. Pantzer, to the National Labor Relations Board, dated October 9, 1943, in which the brief was transmitted and in which I stated, quote:

"I shall also appreciate it if you will consider this letter as a request for oral argument," end quote.

Then, going on to show Mr. Lawyer, the addressee of the 385 letter further reasons why I thought it important to have oral argument in the case.

Mr. SINSHEIMER. May I see that letter a moment, please?

Mr. PANTZER. Yes.

(Document handed to Mr. Sinsheimer.)

Mr. PANTZER. At the suggestion of counsel for the Board, Mr. Trial Examiner, it has been decided that I should offer the carbon copy of that letter in evidence as Respondent's Exhibit Number 102 and I now proceed to do so.

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 102" for identification.)

Mr. PANTZER. If there is any check at the Washington office of the Board which indicates that that letter was not written or received, then the record is to be supplemented to that extent, but I take it if the brief was received, then the letter surely must have been received.

Trial Examiner PERSONS. That was the covering letter for that brief?

Mr. PANTZER. Yes.

Trial Examiner PERSONS. I take it, there is no objection to this exhibit?

Mr. SINSHEIMER. There is no objection, with that qualification, sir.

Trial Examiner PERSONS. The document will be received in evidence as Respondent's Exhibit Number 102. You
386 know of course, the requirement as to duplicate copies of exhibits in "C" cases?

Mr. PANTZER. Yes, your Honor; and I should also like to obtain permission to have any papers which go from our file, to have them photostated and substituted for such papers as exhibits in the record.

Trial Examiner PERSONS. Yes; of course, that is the usual procedure.

Mr. PANTZER. And I hope likewise to make such arrangement with the Union and attorneys for the Board?

Trial Examiner PERSONS. Well, we regularly do that in order not to rob the file of the respective parties, Mr. Pantzer, and that arrangement will be entirely satisfactory.

Mr. SINSHEIMER. May we go off the record just a minute, please, Mr. Examiner?

Trial Examiner PERSONS. Yes; off the record.

(Discussion had off the record.)

Trial Examiner PERSONS. On the record.

(The document heretofore marked "Respondent's Exhibit No. 103" for identification was received in evidence.)

Mr. SINSHEIMER. Mr. Pantzer has just handed me a statement concerning commerce which I am accepting and reading into the record. That statement reads: (Reading).

E. C. Atkins data as to commerce:

387 It is dated January 31, 1944:

(Reading from document.) E. C. Atkins and Company parenthesis herein referred to as the, quote, "Employer" end parenthesis, is a corporation organized and existing under the laws of the State of Indiana with two plants in Indianapolis, Indiana. The main plant in Indianapolis, which occupies two entire city blocks and is bounded on the north by South Street, on the west by Capitol Avenue, on the east by Illinois Street, and on the south by Merrill Street, has been in operation since 1857. The Federal Government owns the new armor plate plant employed by the Employer in war production at the southeast corner of 21st Street and Northwestern Avenue.

The Employer is engaged in the business of manufacturing and selling saws, tools and armor plate, parenthesis (hereinafter referred to as the "Business of the Employer") end quote, end parenthesis.

The facts bearing upon the question of whether the Employer is engaged in interstate commerce, and whether a question of representation affecting commerce arises, in this cause, are as follows:

1. The principal raw materials used in the Business of the Employer are steel, castings, and lumber, parenthesis (hereinafter referred to as the "Raw Materials") end quote, end parenthesis.

388 2. Approximately eighty percent of the raw materials used in the Business of the Employer is purchased and shipped in interstate commerce from sources outside the State of Indiana.

3. Approximately eighty percent of the finished products produced by the Employer is sold in interstate commerce to purchasers outside the State of Indiana.

4. During the calendar year 1943, the Raw Materials used in manufacturing the finished product of the Employer cost in excess of five hundred thousand dollars.

5. During the calendar year 1943, the gross sales price of the finished product sold by the Employer was in excess of one million dollars.

6. The Employer ships its finished products by rail and truck.

7. The finished produce of the Employer is disposed of to the United States Government, jobbers, dealers, subcontractors, and direct to manufacturing consumers.

8. The Employer advertises through industrial magazines and periodicals.

9. During the calendar year 1944, to the date of this hearing, the manufacturing and selling operations of the Employer have continued substantially along the same lines as those related, concerning the year 1943, in the preceding sections hereof.

389 Trial Examiner PERSONS. Is this stipulated by all the parties that that statement is correct in all detail?

Mr. PANTZER. We so stipulate, sir.

Mr. SINSHEIMER. The Board so stipulates.

Mr. RICHARDSON. We so stipulate.

Mr. SINSHEIMER. Now, Mr. Examiner, may be go off the record again, please?

Trial Examiner PERSONS. Yes; Mr. Sinsheimer.

Off the record.

(Discussion had off the record.)

Trial Examiner PERSONS. On the record, gentlemen.

Mr. SINSHEIMER. This is a further stipulation, as follows:

It is further stipulated that Frank M. Richardson would testify today exactly as he did on pages 42 to 49 inclusive, of the official report of proceedings, dated September 24, 1943, in case number 9–R–1200, concerning the organization and character of the International Association of Machinists, District 90, and their affiliate Local 1683:

Is that stipulation satisfactory?

Mr. PANTZER. I so stipulate.

Mr. SINSHEIMER. Mr. Richardson?

Mr. RICHARDSON. Sir?

Mr. SINSHEIMER. Is that stipulation as read satisfactory?

390 Mr. RICHARDSON. Yes.

Trial Examiner PERSONS. And the Board so stipulates?

Mr. SINSHEIMER. Yes; the Board so stipulates.

Mr. PANTZER. With the Board's permission and the Examiner's, I should like to interpolate a further stipulation, namely, that the parties hereto agree that all the other witnesses who testified at the hearing of September 24, 1943, would, if they took the stand in this hearing today, testify exactly as they did on September 24, 1943, with the exception of the natural allowances in their testimony which would have to be made as to time because of the intervening period from September 24, 1943, to January 31, 1944.

Mr. SINSHEIMER. The Board agrees to that.

Mr. RICHARDSON. Yes; we agree to that also.

Mr. PANTZER. We so stipulate also.

Now, that stipulation includes not merely the witnesses of the Respondents, but all of the other witnesses of the Board, is that right? There were other witnesses for the Board, I think.

Mr. SINSHEIMER. That would include all the witnesses who appeared at the hearing; yes.

Trial Examiner PERSONS. I take it the understanding will be, if the Trial Examiner is right, that the parties will rest upon that testimony for proof of the character of the Union, as a labor

391 organization within the meaning of the Wagner Relations Act?

Mr. PANTZER. That is right, and also for proof.

Trial Examiner PERSONS. And counterproof on the part of the Respondents also?

Mr. PANTZER. As to whether or not the plant guards which are in that union are actually employees within the meaning of the word "Employees" as used in the National Labor Relations Act.

Trial Examiner PERSONS. Do I understand, from your answer, Mr. Pantzer, that the Respondent will stipulate that the Machinists is a labor organization within the meaning of the Act?

Mr. PANTZER. Well, you did not exactly so state that, Mr. Examiner. In answer to the allegation that it was a union within the meaning of the Act the Answer states that the Respondent denies the fact alleged in Paragraph 3 of the Complaint and affirmatively substantiates such denial with the allegation that the members of such unit are not employees within the meaning of Section 2 of the National Labor Relations Act and its various subdivisions.

Now, in other words, I feel that the union cannot be a union with respect to this Respondent unless the persons who are members of the union are employees of this Respondent.

Now, I do not intend to contest the fact that the Union is a nationally recognized labor organization; that the Union
392 has a District 90 and the particular local number 1683 involved in this case. The point I am trying to raise by my answer to the Complaint's allegation in Paragraph 3 is the point that these are not employees.

I do not wish to waive that particular point in my admission that it is a union.

Now, that being so, I think it is perfectly apparent to your Honor that I am not contesting that with respect to any other purpose than the issue that I raised in the representation case, to the effect that the union was then and is now a union within the meaning of the National Labor Relations Act.

Trial Examiner PERSONS. Would the Board wish to make a statement?

Mr. SINSHEIMER. The Board would like to say this:

That the Board does not intend to limit its proof of the facts as to whether or not these are employees, to those eight or nine pages which have just been stipulated to be a part of the record, but the entire testimony at that hearing goes to the question of whether they are, or are not, employees of the Respondent.

The Board only—the Board primarily introduced those eight pages for the purpose of establishing the fact that the Union is a labor organization within the meaning of the Act.

Trial Examiner PERSONS. Thank you, Mr. Pantzer, for your very clear statement.

393 Am I right in understanding that the parties propose to rest upon the testimony presented in the previous "R" proceeding on this particular issue?

Mr. SINSHEIMER. The Board does.

Mr. PANTZER. Yes; we do, too.

Trial Examiner PERSONS. Thank you, gentlemen.

Mr. PANTZER. We should have liked to introduce the additional evidence requested upon the subpoena duces tecum on this point because I can conceive that it has a direct bearing with respect to this union, on the kind of employees which are the plant guards in the E. C. Atkins and Company, but in the absence of that kind of testimony we shall have to be bound by the record in the preceding case.

Certainly we have no further testimony to offer on the subject.

Mr. SINSHEIMER. It is further stipulated that the National Labor Relations Board in its Decision and Direction of Election of October, 19, 1943, in the matter of E. C. Atkins and Company and the Respondent herein, and the International Association of Machinists, District 90, and their affiliate Local 1683, Case Number 9-R-1200 found, quote [reading from document]:

"* * * that all plant guards at the Company's two Indian-
apolis plants, excluding the chiefs and lieutenants and other
394 supervisory employees with authority to hire, promote, dis-
charge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of the Section 9 (b) of the Act.", end quote.

Is that so stipulated?

Mr. PANTZER. Yes; that is so stipulated.

Trial Examiner PERSONS. And, of course, the Board?

Mr. RICHARDSON. The Union so stipulates.

Trial Examiner PERSONS. And, of course, the Board?

Mr. SINSHEIMER. The Board so stipulates.

Mr. PANTZER. Of course, the actual Decision and language of the Order is, of course, paramount—the Decision and Direction of Election is, of course, paramount, but as I checked and followed the attorney for the Board as to what he was reading into the record, I found he was reading it accurately.

Mr. SINSHEIMER. It is further stipulated that on November 29, 1943, the Board in its Certification of Representatives stated, quote [reading from document]:

"It is hereby certified that International Association of Ma-
chinists, District 90, and their affiliate, Local 1683, has been des-
ignated and selected by a majority of all plant guards at
395 the two Indianapolis plants of E. C. Atkins and Company,
Indianapolis, Indiana, excluding the chiefs and lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representatives for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment." End quote.

Mr. PANTZER. I so stipulate.

Mr. SINSHEIMER. The Board so stipulates.

Mr. CARTER. The Union so stipulates.

Mr. SINSHEIMER. Off the record, please?

Trial Examiner PERSONS. Yes, sir. Off the record.

(Discussion had off the record.)

Trial Examiner PERSONS. Back on the record, gentlemen.

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 102, a copy of a proposed agreement between E. C. Atkins and Company, Indianapolis, Indiana, and the International Association of Machinists, District 90, and its affilated Local Lodge Number 1683.

(Thereupon the document above referred to was marked "Board's Exhibit No. 102" for identification.)

396 Mr. SINSHEIMER. I would like to call attention at this time to the fact that there is some handwriting on the upper right-hand corner of the first page of this document, reading "Exhibit D" which should be crossed off the exhibit as having no relationship to this matter.

Mr. PANTZER. Let the reporter so cross it off?

Trial Examiner PERSONS. That may be done.

(The reporter complied with instructions of Trial Examiner.)

Trial Examiner PERSONS. Is that satisfactory to you, Mr. Pantzer?

Mr. PANTZER. I wish to say again that I can ave no objection to this Board's Exhibit Number 102 on the basi of authenticity, or that it was received.

My objection to the introduction of this exhibit in evidence is predicted, of course, upon the Trial Examiner's refusal to grant me the application for a subpoena duces tecum which would have shown, I submit, in the collective-bargaining agreement which this Local has with other plants in this town—would have adduced in evidence that certain of the demands in this Board's Exhibit Number 102 were changed by the processes of collective bargaining and that some of them were not; and the extent to which those demands, those demands which were not so changed by collective bargaining, were incompatible with the best

397 interests of the military service.

Trial Examiner PERSONS. I take it when you say "they were changed" you mean in the other plants that similar agreements were presented and in process of collective bargaining that they were modified?

Mr. PANTZER. Yes. Now, where you say "were modified," I cannot, of course, say as to that. I assume that bargaining would have had some effect upon the demands and that it certainly would not have been signed verbatim by any employer. I have had no means of finding out wherein those demands were changed in the processes of collective bargaining.

Now, that is my only objection, Mr. Examiner. My objection is not directed to the authenticity of the paper, nor to the fact that it was received.

Trial Examiner Persons. Nor to the fact that it was presented to the Company?

Mr. Pantzer. We admit that it was presented to the Company.

Trial Examiner Persons. The Union is satisfied with that?

Mr. Carter. Yes; we are satisfied.

Trial Examiner Persons. The document will be received in evidence——

Mr. Sinsheimer. Well, I'd like to make one further statement concerning this——

398 Trial Examiner Persons. Yes; I am sorry. Proceed, Mr. Sinsheimer.

Mr. Sinsheimer. I believe we can stipulate this was sent by the Union to the Company some time between December first and December twentieth 1943, and received by the Company some time in between those dates.

Mr. Pantzer. We so stipulate.

Trial Examiner Persons. Is that the best you can do on those dates, Mr. Sinsheimer?

Mr. Pantzer. That is the best he can do, sir, and the best I can do. No letter was sent with the proposal and the envelope was not retained by the Personnel Department at the plant.

Trial Examiner Persons. The Union is agreeable to those dates?

Mr. Richardson. Yes, sir.

Trial Examiner Persons. The Exhibit, Board's Exhibit Number 102, will be received in evidence.

(The document heretofore marked "Board's Exhibit No. 102" for identification was received in evidence.)

Mr. Sinsheimer. I now offer for identification, as Board's Exhibit Number 103, a copy of a letter dated December 20, 1943, from E. C. Atkins and Company to the International Association

399 of Machinists, signed by Forrest E. Wood, Personnel Director.

This exhibit also bears a marking on the upper righthand corner, "Exhibit E," which has no relation to this case and I ask that it be crossed off the exhibit.

Trial Examiner Persons. That may be done by the reporter, as heretofore handled.

(The reporter complied with the Examiner's instructions.)

(Thereupon the document above referred to was marked "Board's Exhibit No. 103" for identification.)

Trial Examiner Persons. Is the exhibit satisfactory to the Company?

Mr. Pantzer. Yes, sir.

Trial Examiner Persons. And the Union?

Mr. Richardson. Yes, sir; it is.

TRIAL EXAMINER PERSONS. The document will be received in evidence as Board's Exhibit Number 103.

(The document heretofore marked "Board's Exhibit No. 103" for identification was received in evidence.)

Mr. SINSHEIMER. I now offer for identification Board's Exhibit Number 104, which is a copy of a letter dated December 22, 1943, from Kurt F. Pantzer to Mr. John Gettreau, concerning E. C. Atkins and Company.

This exhibit also bears a notation, "Exhibit F," which
400 has no relation to this case and I ask that it be crossed off the exhibit.

TRIAL EXAMINER PERSONS. That may be done. I think Mr. John Gettreau should be identified, Mr. Sinsheimer.

Mr. SINSHEIMER. Mr. Gettreau is in charge of the Indianapolis Division of the National Labor Relations Board and is a Field Examiner for the Board. Is that statement acceptable?

Mr. SHROYER. Off the record a moment, please.

TRIAL EXAMINER PERSONS. Off the record.

(Discussion had off the record.)

TRIAL EXAMINER PERSONS. On the record.

Mr. SINSHEIMER. I should like to correct that statement as follows:

Mr. John Gettreau is a Senior Field Examiner for the Ninth Region of the National Labor Relations Board.

TRIAL EXAMINER PERSONS. Cutting out the reference to the Indianapolis Division?

Mr. SINSHEIMER. Yes; that strikes the reference to the Indianapolis Division.

Mr. PANTZER. We so stipulate.

TRIAL EXAMINER PERSONS. And the Union so accepts that?

Mr. RICHARDSON. Yes.

TRIAL EXAMINER PERSONS. The document will be received in evidence as Board's Exhibit Number 104.

401 (Thereupon the document above referred to was marked "Board's Exhibit No. 104" for identification and received in evidence.)

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 105, a copy of Brief of E. C. Atkins and Company in the matter of E. C. Atkins and Company and the International Association of Machinists, District 90, and its affiliate Local 1683, being case Number 9-R-1200, and which is referred to in Board's Exhibit Number 104, and accompanied Board's Exhibit Number 104 and which is also the same brief which was filed in that case, Number 9-R-1200.

(Thereupon the document above referred to was marked "Board's Exhibit No. 105" for identification.)

Trial Examiner PERSONS. I think you have already made that a part of the record?

Mr. SINSHEIMER. Yes; we are putting this in the record for the convenience of the Examiner and others.

That exhibit also bears a marking, "Exhibit B," which should be removed.

Trial Examiner PERSONS. That marking shall be removed by the reporter in accordance with previous instructions.

(The reporter complied with the Examiner's instructions.)

Mr. SINSHEIMER. I now offer for identification, as Board's Exhibit Number 106, Petition of E. C. Atkins and Company for Re-
consideration of Decision and Direction of Election, dated
402 October 19, 1943, Oral Argument thereon before the Full Board, and Memorandum in Support thereof, in Case Number 9–R–1200, dated October 28, 1943.

This also is referred to in Board's Exhibit Number 104 and accompanied Board's Exhibit Number 104 and was filed in Case Number 9–R–1200.

It likewise bears a notation "Exhibit C," which has no bearing to the exhibit and should be crossed off.

Trial Examiner PERSONS. The reporter will accordingly cross off the notation as previously instructed, and the document may be marked for identification as Board's Exhibit Number 106.

(Thereupon the document above referred to was marked "Board's Exhibit No. 106" for identification.)

Trial Examiner PERSONS. Are you offering them now?

Mr. SINSHEIMER. Yes; I now offer Board's Exhibits Numbers 105 and 106 in evidence.

Mr. PANTZER. No objection.

Mr. CARTER. No objection.

Trial Examiner PERSONS. The documents will be received in evidence in their proper rotation, as Board's Exhibits Numbers 105 and 106, in evidence.

(The documents heretofore marked for identification as "Board's Exhibits Nos. 105 and 106" were received in evidence.)

Mr. SINSHEIMER. At this time I would like to call to
403 the Trial Examiner's attention that in Paragraph 7 of Respondent's Answer, the Respondent insists that the Union has requested bargaining rights, and in Paragraph 8 the Respondent admits that the Company has refused to bargain with the Union. I believe Mr. Pantzer desires to make a statement as to that——

Mr. PANTZER. I merely desire to call the Trial Examiner's attention to the two qualifications I set forth in the Answer to those two admissions which are dependent, of course, upon the definition of the word "employees."

Trial Examiner PERSONS. I think it might be helpful to the record if you would tell us how the Company received that proposed agreement, whether there were any definite demands or requests for changes in the document itself.

Mr. PANTZER. I cannot state how the Respondent received the proposed agreement prior to December 20, from my own knowledge, but I state, subject to correction by Mr. Richardson over at the Union's table there, that it was received in an envelope through the United States mail, addressed to E. C. Atkins and Company, Indianapolis, Indiana, without any forwarding letter.

Mr. RICHARDSON. That's right.

Trial Examiner PERSONS. Will the Respondent agree that that was, in effect, a request for collective bargaining?

Mr. PANTZER. Yes; I do not wish to quibble with the

404 Trial Examiner. Quibbling is possible, but I should say that even if the Company has not had much experience with such requests, the attorney for the Company has had and the attorney for the Company should have advised the Company that it was such a request.

Trial Examiner PERSONS. Thank you, sir.

Mr. SINSHEIMER. The Board rests.

Trial Examiner PERSONS. Do you have matters to present, Mr. Pantzer?

Mr. PANTZER. I have no testimony or exhibits to submit in answer to the Board's case, but wish to be permitted this statement:

That the Respondent will, if it is finally determined that the Respondent's contention as to the definition of the word "employees" is incorrect, gladly bargain with the Union in this case and that the Respondent, as an employer, has no animosity whatever toward Mr. Richardson, who has been the organizer of the Union and who has behaved himself and counseled members of the Union to behave themselves, with exemplary conduct in this case.

(To Mr. Richardson). I want you to know, Mr. Richardson, there is absolutely nothing personal in this position which we are taking, and which I think you understand.

Mr. RICHARDSON. Yes, sir.

405 Trial Examiner PERSONS. There is one little matter that I read in the Answer, Mr. Pantzer, upon which I would be glad to have your definition, in Paragraph 5 on page 2, wherein you speak about the Board's election and wherein you state "* * * but the Respondent denies that such secret ballot election was properly conducted * * *" and et cetera, and my question is about your phrase "denies * * * such * * * election was properly conducted * * *" and my question is: What connotation is intended by that, sir?

Mr. PANTZER. There is no connotation intended by that language that the election was conducted other than in a very fair and accurate way and that the ballots were cast as shown by the certificate; that the ballots were counted and that the results were as shown.

In other words, on the matter of the fairness of the election, there is no contention.

The only contest is that it was not a proper election in the light of the fact that the plant guards who voted in that election were not employees of the Respondent within the meaning of the word "employees" as defined in the National Labor Relations Act and that consequently the election was improper in that the Board had absolutely no jurisdiction in the premises.

Trial Examiner PERSONS. But there is no contest as to the conduct of the election itself?

406 Mr. PANTZER. None whatever. I believe, of course, that the stipulation as to the exhibits and the record implies, does it not, Mr. Examiner, that the evidence therein contained is all evidence in support of my answer as well as evidence in support of the allegations in the complaint?

Trial Examiner PERSONS. I so understand it.

Mr. SINSHEIMER. That is my understanding.

Trial Examiner PERSONS. I guess my further question is an excess of caution, perhaps, but in this Paragraph number 19, the exceptions referred to are not exceptions taken to the election or its conduct, or the result, but only on the record of the previous "R" proceedings; is that correct, Mr. Pantzer?

Mr. PANTZER. That is true, Mr. Examiner, with the sole exception already averted to, namely, that I do not think the election itself was proper in that the Board had jurisdiction to conduct it at all.

Trial Examiner PERSONS. I take it that will be abundantly clear in the record, sir.

Have you anything further?

Mr. PANTZER. There is nothing further.

Mr. SINSHEIMER. The Board would like to——

Trial Examiner PERSONS. The Respondent rests?

Mr. PANTZER. I have nothing further. The Respondent rests.

407 Mr. SINSHEIMER. The Board would like to ask one further question of Mr. Pantzer:

Will you stipulate, Mr. Pantzer, that you are the same Mr. Pantzer who wrote the letter dated December 22, 1943, which appears as Board's Exhibit Number 104, and that you are and that you were at that time, attorney for E. C. Atkins and Company, and represented E. C. Atkins and Company?

Mr. PANTZER. Yes.

Mr. SINSHEIMER. And also that Mr. Wood was at the time of the date of the letter, which appears in this record as Board's Exhibit Number 103, on December 20, 1943, was the Personnel Director of E. C. Atkins and Company?

Mr. PANTZER. That is true.

Trial Examiner PERSONS. Is he no longer?

Mr. PANTZER. He is still, and continues to be such Personnel Director.

Mr. SINSHEIMER. That is all for the Board.

Trial Examiner PERSONS. Anything further from any of the parties?

(No response.)

Trial Examiner PERSONS. Hearing nothing further, this hearing is now closed.

I take it, gentlemen, you understand the rules of procedure? I don't think we need go into that, do we?

Mr. PANTZER. Well, I should for the record to have you
408 repeat that, because the rules have been changed so frequently, sir.

Trial Examiner PERSONS. There is one thing I should have stated. You may give oral argument before the Trial Examiner if you so desire, but I assume from your experience in such matters, Mr. Pantzer, that you have no desire to orally argue this case at this time?

Mr. PANTZER. I have no desire to argue the case at this time, your Honor. I think the Trial Examiner understands the point we make.

Trial Examiner MYERS. Well, the rules provide that the parties to the proceeding may request an opportunity to present briefs to the Trial Examiner——

Mr. PANTZER. We make no such request at this time, but ask that our rights be preserved in the event we desire so to do.

Trial Examiner PERSONS. The Board does not intend to file a brief?

Mr. SINSHEIMER. The Board does not intend to file a brief.

Trial Examiner PERSONS. And the Union—does it intend to file a brief?

Mr. CARTER. No.

Trial Examiner PERSONS. As you know, the rules further pro-
409 vide that you may present exceptions to the intermediate report of the Trial Examiner which may be accompanied by a brief and request for oral argument before the Board, should be made within ten days of the transfer of the case to the Board.

I have not previously said it, but I take it that you understand that the Trial Examiner's intermediate report is served upon the parties and becomes a part of the record?

Mr. PANZER. We again here, and whether we have a right to make such request or not, in this phase of the proceedings—but we here, again, respectfully ask for the right to argue this case orally before the Full Board.

The reason we are not asking that the right to argue it here before your Honor is simply because the briefs set forth clearly what arguments have hitherto been made and we feel those are

the arguments to which you should direct yourself in deciding the case.

Trial Examiner PERSONS. I have nothing whatever to say about your request for argument before the Board, but I repeat that should be made within ten days of your notice of its being transferred to the Board.

Anything further?

(No response.)

Trial Examiner PERSONS. Hearing nothing further, the hearing is now closed.

(At 11:45 o'clock a. m., Monday, January 31, 1944, the hearing in the above-entitled matter was closed.)

411 *Board's Exhibit 101-A*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9-C-1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

COMPLAINT

It having been charged by International Association of Machinists, District 90, and their affiliate Local 1683, 49½ South Delaware Street, Indianapolis, Indiana, affiliated with the American Federation of Labor, herein called the Union, that E. C. Atkins and Company, Indianapolis, Indiana, herein called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, by the Acting Regional Director for the Ninth Region, as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 3, Article IV, Section 1, hereby issues its complaint and alleges as follows:

1. E. C. Atkins and Company is a corporation organized and existing by virtue of the laws of the State of Indiana, with its principal office and places of business located in Indianapolis, Indiana, and has at all times herein mentioned continuously
412 engaged at said places of business in the manufacture and sale of saws, tools, and armor plate.

2. The respondent, in the course and conduct of its business as aforesaid, causes and has continuously caused a substantial part of the materials and products used in its operations described

above, to be delivered and transported in interstate commerce to its place of business in the State of Indiana, and causes and has continuously caused the greater part of the products manufactured, sold and distributed by it in its business as aforesaid, to be delivered and transported from its places of business in the State of Indiana to and through states of the United States other than the State of Indiana.

3. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

4. All plant guards at the two Indianapolis plants of the respondent, excluding the chief and lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (*b*) of the Act, as found by the National Labor Relations Board in its Decision and Direction of Election of October 19, 1943, in the matter of E. C. Atkins and Company and International Association of Machinists, District 90, and their affiliate Local 1683, Case No. 9–R–1200.

5. On November 17, 1943, the employees in the appropriate unit described in paragraph 4 above, designated and selected the Union as their representative for the purposes of collective bargaining by a secret ballot election conducted under the supervision of the Acting Regional Director for the Ninth Region of the National Labor Relations Board, pursuant to the Decision and Direction of Election of the National Labor Relations Board of October 19, 1943, in the matter of E. C. Atkins and Company and International Association of Machinists, District 90, and their
413 affiliate Local 1683, Case No. 9–R–1200. On November 29, 1943, the Union was certified as the representative for the purposes of collective bargaining of the employees in the above-described appropriate unit by the National Labor Relations Board pursuant to Section 9 (c) of the Act, notice of which certification was duly given the respondent and the Union.

6. At all times since November 17, 1943, the Union has been the representative for the purposes of collective bargaining of the employees in said unit, and by virtue of Section 9 (a) of the Act, has been and now is the exclusive bargaining agent for all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

7. On or about December 14, 1943, and on numerous occasions thereafter, the Union requested the respondent to bargain with it as the exclusive representative of the employees in the unit described in paragraph 4 above, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

8. On or about December 14, 1943, and at all times thereafter, the respondent refused, and has since continued to refuse, to bar-

gain collectively with the Union as the exclusive representative of the employees in the unit described in paragraph 4 above.

9. By the acts described in paragraph 8 above, the respondent has engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

10. By the acts described in paragraph 8 above, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

414 11. The activities of the respondent described in paragraph 8 above, occurring in connection with the operations of the respondent described in paragraphs 1 and 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lend to labor disputes, burdening and obstructing commerce and the free flow of commerce.

12. The acts of the respondent as herein above set forth constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on this 12th day of January, 1944, issues its complaint against E. C. Atkins and Company, the respondent herein.

415 United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

NOTICE OF HEARING

Please take notice that on the 31st day of January 1944, at 10:00 o'clock in the forenoon, in Room 216, Federal Building, Indianapolis, Indiana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of

the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In witness whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Acting Regional Director for the Ninth Region on this 12th day of January 1944.

[SEAL]

Rosemary S. Macke,
ROSEMARY S. MACKE,
Acting Regional Director,
National Labor Relations Board, Ninth Region.

416

Board's Exhibit 101–B

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

AFFIDAVIT AS TO SERVICE

STATE OF OHIO,
County of Hamilton, ss:

I, Bertie Workman, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 9th Region at Cincinnati, Ohio; on the 12th day of January 1944, I served by postpaid registered mail, bearing Government frank, a copy of Complaint and Notice of Hearing, and Copy of Charge, to the following-named persons, addressed to them at the following addresses: E. C. Atkins and Company, 402 South Illinois St., Indianapolis, Ind.; International Association of Machinists, District 90, and their Affiliate Local 1683, A. F. of L., Mr. Frank M. Richardson, Bus. Rep., 491½ S. Delaware St., Indianapolis, Ind.

BERTIE WORKMAN.

Subscribed and sworn to before me this 13th day January 1944.

GRACE FRAZIER,
Designated Agent.

417 *Board's Exhibit 101–C*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

ORDER GRANTING MOTION

The motion of the respondent in the above-entitled matter, for extension of time to January 29, 1944, for filing its answer, is hereby granted.

Dated, Cincinnati, Ohio, this 27th day of January, 1944.

[SEAL] Martin Wagner,
MARTIN WAGNER,
Regional Director,
National Labor Relations Board.

418 *Board's Exhibit 101–D*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

AFFIDAVIT AS TO SERVICE

STATE OF OHIO,
County of Hamilton, ss:

I, Lelia H. Scallan, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the Ninth Region at Cincinnati, Ohio; on the twenty-seventh day of January 1944, I served by postpaid registered mail, bearing Government frank, a copy of Order Granting Motion, to the following named persons, addressed to them at the following addresses: E. C. Atkins and Company, 402 South Illinois St., Indianapolis, Ind.; Inter-

national Association of Machinists, District 90, and their Affiliate Local 1683, A. F. of L., Mr. Frank M. Richardson, Bus. Rep., 491½ S. Delaware St., Indianapolis, Ind.

LELIA H. SCALLAN.

Subscribed and sworn to before me this 28th day of January, 1944.

GRACE FRAZIER,
Designated Agent.

419 *Board's Exhibit 101–F*

United States of America

Before the National Labor Relations Board

Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT 90, AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

ANSWER OF RESPONDENT, E. C. ATKINS AND COMPANY

The Respondent, E. C. Atkins and Company, for answer to the Complaint herein, alleges as follows:

1. The Respondent admits the facts alleged in paragraph 1 of the Complaint.

2. The Respondent admits the facts alleged in paragraph 2 of the Complaint.

3. The Respondent denies the facts alleged in paragraph 3 of the Complaint; and affirmatively substantiates such denial with the allegation that the members of the Union are not "employees" within the meaning of Section 2 of the National Labor Relations Act, and its various subdivisions.

4. The Respondent denies the facts alleged in paragraph 4 of the Complaint; and affirmatively substantiates such denial with
420 the allegation that the plant guards at the two Indianapolis plants of the Respondent are not "employees" within the meaning of Section 2 of the National Labor Relations Act, and its various subdivisions, and consequently cannot constitute a unit appropriate for the purposes of collective bargaining.

5. The Respondent admits that an election by secret ballot of certain of the plant guards at the two Indianapolis plants of the Respondent was held on November 17, 1943; and further admits that on November 29, 1943, the National Labor Relations Board

certified the Union as the representative, for the purposes of collective bargaining, of such plant guards; but the Respondent denies that such secret ballot election was properly conducted, or that such plant guards were "employees" of the Respondent within the meaning of the word "employee," as used in Section 2 of the National Labor Relations Act, and its various subdivisions. The Respondent also admits that notice of the certification of the National Labor Relations Board was duly given the Respondent; but has no knowledge as to whether such notice was given the Union.

6. The Respondent denies the facts alleged in paragraph 6 of the Complaint.

7. The Respondent admits the facts alleged in paragraph 7 of the Complaint, except to the extent of the conclusion inferable therefrom that the "employees" therein described were employees of the Respondent within the meaning of that word as used in Section 2 of the National Labor Relations Act, and its various subdivisions.

8. The Respondent admits the facts alleged in paragraph
421 8 of the Complaint, except to the extent of the conclusion inferable therefrom that the "employees" therein described were employees of the Respondent within the meaning of that word as used in Section 2 of the National Labor Relations Act, and its various subdivisions.

9. The Respondent denies the facts alleged in paragraph 9 of the Complaint.

10. The Respondent denies the facts alleged in paragraph 10 of the Complaint.

11. The Respondent denies the facts alleged in paragraph 11 of the Complaint.

12. The Respondent denies the facts alleged in paragraph 12 of the Complaint.

13. The Respondent further alleges that the Respondent is not, and cannot be, an employer within the meaning of Section 2 of the National Labor Relations Act, or any of its subdivisions, with respect to the "plant guards" referred to in the Complaint, because all of them were "auxiliary military police" under the jurisdiction and control of the Continuous Security District Office of the War Department of the United States of America, located in Cincinnati, Ohio; and because all such "auxiliary military police" were in the Federal Military Service at all times alleged in the Complaint.

14. The Respondent further alleges that the "employer" of the "plant guards," referred to in the Complaint, is the United States of America, and that consequently the Respondent cannot be their "employer" within the meaning of Section 2, subdivision 2 of the National Labor Relations Act.

422 15. The Respondent further alleges that the relationship of employer and employee, with its various incidents, has never existed as between the Respondent and the plant guards referred to in the Complaint, and that consequently the relationship between the Respondent and such plant guards is not subject to the jurisdiction of the National Labor Relations Board under any of the provisions of the National Labor Relations Act.

16. The Respondent further alleges that the Union purports to represent plant guards at various other plants in the Indianapolis area; which plant guards have not been sworn into the Military Service under the Articles of War; and the Respondent further alleges, upon information and belief, that the collective bargaining agreements executed between the Union and the corporations at which such plant guards are stationed, respectively, contain provisions respecting seniority, discipline, handling of grievances, vacations, hours of work, and other incidents of tenure, which are incompatible with the Articles of War and military orders pursuant to which the auxiliary military police at the plants of the Respondent are subject to the jurisdiction of the Continuous Security District Office of the War Department of the United States of America, located in Cincinnati, Ohio; and that consequently any order directing the Respondent to bargain with respect to such incidents of employment with the plant guards at the plants of the Respondent is void and of no force and effect.

17. The Respondent further alleges that the hearing, which resulted in the Decision and Direction of Election of the National Labor Relations Board, entered October 19, 1943,
423 was held without due process of law because of the denial, in part, of the Respondent's application for subpoenas duces tecum directed at F. M. Richardson, the Business Representative of the Union, to produce union records and that consequently said Decision and Direction of Election is void and of no force and effect as against the Respondent.

18. The Respondent further alleges that the Decision and Direction of Election, entered October 19, 1943, and the Certification, entered by the Board on November 29, 1943, are void, because the National Labor Relations Board denied the repeated written requests of the Respondent for permisison to appear before the Board and make argument of the issues raised by the Respondent; the Respondent never having been permitted to address argument respecting the Respondent's points to any member or representative of the Board, who prepared the Decision and Direction of Election, entered October 19, 1943, or the Certification, entered November 29, 1943.

19. The Respondent further alleges that the Certification of the National Labor Relations Board, entered November 29, 1943, is based in whole upon an investigation pursuant to Section 9, Sub-

section (c) of the National Labor Relations Act, and that the record of such investigation (including the Petition for Certification, Proof of Service thereof, Transcript of verbal testimony, and written exhibits, briefs, Decision and Direction of Election, and final Certification) evidences a denial of due process within the meaning of the Fifth Amendment to the Constitution of the
424 United States; and the Respondent respectfully prays leave to incorporate all the objections and exceptions in such record by reference thereto, as defenses to the Complaint.

20. The Respondent further alleges that the record of investigation, referred to in the last preceding paragraph of this Answer, and the defenses, objections, and exceptions of the Respondent therein disclosed are material to the defense of the Respondent herein; and the Respondent therefore respectfully requests the National Labor Relations Board to produce the original copy of such record at the hearing upon the Complaint.

Wherefore, the Respondent respectfully prays that the Complaint herein be dismissed.

E. C. ATKINS AND COMPANY,
Respondent,
By HENRY C. ATKINS, Jr.,
Vice President.

MESSRS. BARNES, HICKAM, PANTZER & BOYD,
Attorneys for Respondent,
1313 Merchants Bank Building, Indianapolis Indiana.
KURT F. PANTZER,
LEWIS D. SPENCER,
Of Counsel.
Dated January 27, 1944.

425 STATE OF INDIANA,
County of Marion, ss:

Henry C. Atkins, Jr., being first duly sworn, upon his oath says: That he is a Vice-President of E. C. Atkins and Company, the Respondent in the "Answer of Respondent, E. C. Atkins and Company," which precedes this jurat; that he has read such Answer; and that the facts therein are true as he verily believes.

Further the affiant saith not.

HENRY C. ATKINS, Jr.

Subscribed and sworn to before me, a Notary Public in and for said county and state, this 27th day of January 1944.

[SEAL] Thelma Blessing.
THELMA BLESSING,
Notary Public.

My commission expires June 5, 1947.

427 *Board's Exhibit 102*

AN AGREEMENT BETWEEN THE E. C. ATKINS COMPANY, INDIANAPOLIS, INDIANA, AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 90, AND ITS AFFILIATED LOCAL LODGE NO. 1683

PREAMBLE

E. C. Atkins Company and the International Association of Machinists, District No. 90, and its affiliated Local Lodge No. 1683, desiring to promote and improve relationship between the parties, and to establish basic understanding as to hours of work, conditions of employment, rates of pay and to provide a fair and equitable method of handling and adjusting grievances, have negotiated and do hereby agree to the following Articles of Agreement at Indianapolis, Indiana, on this ____ day of _____, 1943.

Article I—Recognition

SECTION 1. Recognition.—E. C. Atkins Company, hereinafter called the Company, does hereby recognize the International Association of Machinists, District No. 90, and its Affiliated Plant Protection Local Lodge No. 1683, hereinafter called the Union, as the exclusive bargaining agent within the meaning of the National Labor Relations Act, for its employees in the unit described in Section 2 of this Article.

SECTION 2. Unit.—The National Labor Relations Board has certified and the Company and the Union do hereby agree that the Unit appropriate for collective bargaining purposes, hereinafter called the Unit, shall consist of "all guards of E. C. Atkins Company, excluding Captain, Director and Assistant Director, and all other employees."

SECTION 3. Union Shop.—The employees of the Company within the Unit described in Section 2 of this Article shall become members of the Union within thirty (30) days after the effective
428 date of this Agreement, and as a condition of employment shall remain members in good standing in the Union during the life of this Agreement. New employees and employees now serving their probationary period shall become members of the Union at the expiration of their probationary period and shall remain members in good standing in the Union as a condition of employment during the life of this Agreement.

Article II—Representation

SECTION 1. Shift Committeemen.—The Union shall appoint or elect not more than one (1) Shift Committeeman for each shift

or crew. It shall be the duty of the Shift Committeeman to take up with the proper Company officer grievances or suggestions from employees on his shift or crew.

SECTION 2. Negotiating and Grievance Committee.—The Negotiating and Grievance Committee shall consist of four (4) members and shall handle grievances or suggestions referred to them by the Shift Committeeman, which are not satisfactorily adjusted by the Shift Committeeman. Representatives of District No. 90 and the International Union may be present at any, or all, of the meetings for the purpose of collective bargaining, or the handling of grievance matters.

SECTION 3. Change in Union Officers.—The personnel of the Shift Committee and the Negotiating and Grievance Committee shall be certified to the Company and the Union shall promptly advise the Company of any changes in such personnel as they occur.

SECTION 4. Regular Meetings.—Company representatives and the Negotiating and Grievance Committee shall meet monthly for the purpose of considering any grievances, suggestions, or other matters ordinarily considered at such joint meetings. In case an emergency arises, meetings may be held more often by mutual agreement.

429 ARTICLE III—GRIEVANCE PROCEDURE

SECTION 1. Steps in Procedure.—It is agreed that grievance procedure shall be as follows:

A. Whenever an employee in the Unit believes that the Company is violating any part of this Agreement, or that he is being unjustly or unfairly dealt with by any officer or agent of the Company, he may go to either the Sergeant on his shift, or Shift Committeeman and state his grievance or suggestion. The Sergeant, the employee, and the Shift Committeeman shall make every honest effort to adjust all grievances or complaints.

B. If, under Section A, adjusting of the employee's grievance is not reached within three (3) days, the matter shall be referred to the Negotiating and Grievance Committee by the employee or the Shift Committeeman. The Sergeant shall refer the matter to the Captain, or the Director of the Plant Protection Force.

C. If the Negotiating and Grievance Committee is unable to reach a satisfactory adjustment with the Captain, or the Director of the Plant Protection Force, the Committee shall then appeal the matter to the Executive Officers of the Company. In this final step the Company and the Union, either separately or jointly, may invoke the aid of the Conciliation Service of the United States Department of Labor, or any other United States Government or a State Government Agency that may have jurisdiction over the matters in dispute.

430 D. An aggrieved employee shall be subject to call by the Company or the Union to appear in any or all of the foregoing conferences for the purpose of giving testimony having a bearing on the case. Likewise, equal rights shall be given the aggrieved employee to be present at such conferences on his own initiative, providing such desire is presented in writing to the Negotiating and Grievance Committee within five (5) days from the initial date of filing the grievance.

SECTION 2. Records.—All grievances shall be in writing and in duplicate. When a grievance has been settled or adjusted one copy will be filed by the Company and one by the Union as a matter of permanent record; providing, however, that if a grievance is adjusted between the Shift Committeeman and the Sergeant, no written record is required. All cases handled by the Negotiating and Grievance Committee shall be in writing, and the Company shall give written decisions on each separate case, a copy of such written decision to be sent to the Office of District No. 90.

SECTION 3. Appeal.—Any alleged grievance not appealed from a decision at one step of the procedure to the next step within five (5) days of the Company's written decision shall be conclusively presumed to be settled on the basis of the last decision, which decision shall be binding and not subject to further appeal.

Article IV—Discharge

SECTION 1. Discipline.—The Company shall have the right to discharge, suspend, or discipline any employees for cause or violation of any of the Company's posted rulings or regulations. Any employee discharged, suspended, or otherwise disciplined who feels that he has been unjustly dealt with by the Company's rep-
431 resentatives or agents shall have recourse through the grievance procedure provided in Article III of this agreement. If an employee, after investigation, is found to have been unjustly discharged, or suspended, he shall be reinstated without loss of seniority and paid for time lost less any wages received from other employment during such period of lost time.

If a discharged, or suspended employee fails to present his discharge or suspension as a grievance by the end of the second full working day after his discharge or suspension, such discharge or suspension shall be considered as final, and no grievance based thereon shall be considered.

ARTICLE V—GENERAL WORKING CONDITIONS

SECTION 1. Work Stoppage.—The Union agrees that there shall be no strikes, stoppages, or boycotts during the life of this agreement.

SECTION 2. Lock-out.—The Company agrees that there shall be no lock-out or discrimination during the life of this agreement.

SECTION 3. Uniforms and Equipment.—The Company agrees to furnish all uniforms and equipment to the employees coming under the provisions of this Agreement, and further agrees to replace any badly worn uniforms, overcoats, raincoats, and hats, and any other equipment necessary to carry out the duties assigned to them, provided the employee does not abuse this equipment by improper care, or by wearing same off duty.

SECTION 4. Personal Appearance.—Guards reporting for duty shall be neat in appearance, clean shaven, and in the uniform furnished for the season. Any guard violating this Section shall be subject to one day's suspension.

432 SECTION 6. Bulletin Boards.—The Company shall provide a reasonable number of bulletin boards on which the Union may post notices of its recreational and social affairs and of Union elections and results thereof, appointments, and meetings. All such notices must be approved by the Company before being posted, and shall be countersigned by the officer of the Union. The Union shall promptly advise the Company of the officers who have the power to countersign such notices and shall provide it with their specimen signatures. There shall be no other distribution or posting by the Union or employees on the Company's property of pamphlets, advertising of political matter, notices, or any kind of literature other than herein provided.

SECTION 7. No Age Limit.—So long as an employee is capable of performing his work, age shall not be a disqualifying factor either in hiring of new help or the continued employment of employees; provided, however, that the Company shall not be compelled to retain in its service any employee who is not qualified to perform his duties.

SECTION 8. Safety Committee.—The Union shall be represented by at least one member on the Safety Committee.

Article VI—Seniority

SECTION 1. Definition.—Rights to promotion, preference to shifts, and the right to remain in the service of the Company in case of reduction in force shall be governed by seniority subject to the provisions of this Agreement.

SECTION 2. Seniority Date.—An employee's seniority shall begin on the date he enters the employ of the Company in the Unit, but he shall not be placed on the Seniority List and shall not enjoy the rights enumerated in Section 1 of this Article until he completes the probationary period as provided for in Section 3 of this Article.

433 SECTION 3. Probationary Period.—All new employees shall be considered as on probation for a period of sixty (60) working days after their date of hiring, and there shall be no responsibility on the part of the Company for reemployment of probationary employees if they are laid off or discharged during this period.

SECTION 4. Lay-offs.—In the event of the reduction in force, the last employee hired shall be the first to be laid off. When necessary to increase the force after a lay-off, the last employee laid off shall be the first to be returned to service.

SECTION 5. Recall to Work.—When it becomes necessary to lay off employees as much notice as possible will be given, but in any event such notice of lay-off shall be not less than twenty four (24) hours. When calling employees to return to work after a lay-off, the Company will ordinarily use Registered Mail, but in an emergency, the Company may notify some, or all, employees by phone, or in person, to return to work. Any employee who fails to return to work or get in touch with the Company within five (5) business days after the day his notice is mailed will be conclusively presumed to have resigned and his record shall be noted accordingly.

SECTION 6. Change of Address.—Laid off employees shall keep the Company and the Union advised of any change of address. The Company is entitled to rely on the address furnished by the employees for all purposes within the meaning of this Agreement.

Article VII—Management of Plant

The management of the Plant and the direction of the working forces, including the right to hire, suspend, or discharge, for proper cause, or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons is vested exclusively in the Company; provided, that this will not be used for purposes of discrimination against any member of the Union.

434

Article VIII—War Department Regulations

It is understood that for the duration of the war this Agreement is in all respects subject to the provisions of the Directives of the War Department concerning Military Organizations of the Plant Guard Forces (WD Directive, July 2, 1942, Ag 231.43; SOS Circular —, 1942; and any amendments thereto), and that nothing contained in this Agreement shall be construed in any way to interfere with the organization, efficiency, training, and control by the War Department of the Company Guard Force as an Auxiliary to the Military Police, nor to abrogate or interfere with the duties, responsibilities, and rights imposed by the War Department upon any employee in such Auxiliary Military Police.

Article IX—Leave of Absence

SECTION 1. Requested Leave.—Leave of absence may be granted to an employee for reasons such as: Jury duty, attending convention, or voluntary military duty in defense of the United States and for other valid reasons. Request for leaves of absence must be made to the Director of Plant Protection in writing and each

case will be decided on its merits. The employee shall not lose his seniority during such leaves of absence. An employee laying off from work without notice, or just cause may be subject to loss of seniority.

SECTION 2. Military Leave.—Any employee called to compulsory military duty shall retain his seniority and the Company shall reinstate such employee within forty (40) days after his return; provided, however, that he pass the physical examination as given on entering the service of the Company, and if a layoff period is in effect which would have included such employee had he been working, it shall be effective as to him.

SECTION 3. Failure to Return.—Employees not returning upon the expiration of their leave shall be considered to have quit voluntarily.

435 SECTION 4. Records.—The Bargaining Committee shall be supplied monthly with copies of the names of all employees on leave of absence for more than a week.

Article X—Duration

SECTION 1. Time of Expiration.—This Agreement shall remain in force for one (1) year from the date hereof, and shall automatically renew itself from year to year unless written notice of desire to terminate or to modify any portion or any of the terms hereof is given, by either party to the other at least thirty (30) days prior to the expiration of any such annual period.

Amendments may be made from time to time by mutual agreement.

SECTION 2. Effective Date.—This Agreement shall be effective at once, except that part which is subject to War Labor Board approval. The Company and the Union will jointly apply to the War Labor Board for their approval from the date of signing.

SECTION 3. Supplements.—There is attached hereto and made a part hereof Supplement No. 1, governing hours of work, and Supplement No. 2, governing wage rates. Because of present economic conditions it is agreed that Supplements Nos. 1 and 2 may be revised or amended by agreement between the Company and the Union on three (3) days' notice from either party and without disturbing any of the other Articles of this Agreement.

Article XI—Vacations

SECTION 1. Eligibility.—Employees who have one (1) year or more of continuous service in the Unit shall be entitled to a vacation of one (1) week.

SECTION 2. Vacation Pay.—Employees entitled to a vacation under Section 1, of this Article, shall be paid forty (40) hours at the hourly rate received the last pay period in June of each year. Vacation pay checks shall be delivered to the employee before his vacation starts.

436 SECTION 3. Vacation Period.—All vacations shall be taken between July 15, and September 30, of each year, and must be arranged for in advance with the Director of Plant Protection.

SECTION 4. Foregoing Vacations.—Any employee who is entitled to a vacation and, on request of the Company, does not take it shall be paid his vacation pay in addition to earnings on the job.

In witness whereof, the parties hereto have executed this agreement as of this date, ---------- 194 ---.

For the Employees International Association of Machinists, District #90, Local Lodge #1683.

For E. C. Atkins Company.

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President.

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Negotiating Committee.

437 SUPPLEMENT No. 1

HOURS

SECTION 1. The work week shall consist of seven consecutive days beginning on Monday of each week. The work day shall be the calendar day from midnight to midnight. Each employee shall have a designated time at which his work day commences.

SECTION 2. The first forty (40) hours of work in any work week, not exceeding eight (8) hours in any one day, shall be paid for at the regular rate. Work in excess of forty (40) hours in any work week, or in excess of eight (8) hours in any one day, shall be paid for at one and one half times the regular rate.

SECTION 3. Subject to the provisions of Executive Order #9240 and of Section 2, of this Supplement, when an employee works six (6) consecutive days in a work week, time and one-half shall be allowed for time worked on the sixth (6th) consecutive work day in any work week; also time and one-half shall be allowed for time worked on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

SECTION 4. Subject to the provisions of Executive Order #9240, when an employee works seven (7) consecutive days, double time shall be allowed for all work done on the seventh (7th) consecutive work day in any work week.

SECTION 5. Each shift worked will be counted as of the work day in which the shift began. For example, a shift works from 11:00 P. M., Monday until 7:00 A. M. Tuesday, would be counted as of Monday.

SECTION 6. When a holiday is not observed, that is when shifts operate as usual on a holiday, time and one-half will be paid only for the shift that begins on the holiday.

SECTION 7. No employee shall be laid off during the regular work day or work week without pay for the purpose of avoiding overtime payment.

SECTION 8. The Company reserves the right to change shift hours within the limitations of Executive Order #9240, however, before any change is made in shift hours, either in the number of hours worked per week, or the starting time of shifts, the Bargaining Committees shall be advised in advance and given an opportunity to present objections which will be given consideration before any such change shall become effective.

438 SUPPLEMENT No. 2

WAGES

Wages for all employees alike coming under the provisions of this agreement shall be as follows:

Hiring rate	$0.75 per hour
After 30 days	.80 per hour
After 90 days	.90 per hour
After 6 months	1.00 per hour

None of the provisions of Supplement No. 2 shall be effective until approved by the National War Labor Board and when so approved they shall become effective as of the beginning of the work week which commenced on _____, 194 __, unless some other effective date is prescribed by the National War Labor Board.

339 *Board's Exhibit 103*

E. C. ATKINS AND COMPANY

402 South Illinois St.

INDIANAPOLIS 9, IND., U. S. A.

DECEMBER 20, 1943.

INTERNATIONAL ASSOCIATION OF MACHINISTS,
District #90, Local 1683,
49½ South Delaware Street, Indianapolis, Indiana.

Attention: Mr. F. M. Richardson, Business Representative.

DEAR SIR: This will acknowledge receipt of the proposed form of contract to be entered into between the International Associa-

tion of Machinists, District #90, and its affiliated local lodge #1683, and the E. C. Atkins and Company.

You have doubtless been advised of the position heretofore taken by our Company that the auxiliary military police which you represent are in no sense employees of our Company and that consequently we have no obligation under federal or state law to bargain with you as their representative.

Under the circumstances may we suggest that you take such other action as you see fit to establish our obligation to bargain with you respecting such auxiliary military police.

Yours truly,

E. C. ATKINS AND COMPANY,
(S) Cyrus E. Wood,
CYRUS E. WOOD,
Personnel Director.

CEW:as.

440

Board's Exhibit 104

BARNES, HICKAM, PANTZER & BOYD

Attorneys at Law

INDIANAPOLIS 4, INDIANA

DECEMBER 22, 1943.

E. C. Atkins and Company—Case No. 9-R-1200

Mr. JOHN GETREU,
National Labor Relations Board,
Architects Building, Indianapolis, Indiana.

DEAR MR. GETREU: This will follow up our telephone conversation of today, in which you advised that International Association of Machinists, District 90 and their Affiliate, Local 1683, filed a charge of unfair labor practice against my client, E. C. Atkins and Company, for refusal to bargain, and asked me to state the position of my client.

I think the position is well stated in the letter which E. C. Atkins and Company wrote the Union when it was requested to bargain, which letter you said you had already read.

The reasons supporting the position stated in the letter are best set forth in the two briefs which our firm prepared and filed in behalf of E. C. Atkins and Company with the National Labor Relations Board. I enclose copies of each. You will note we asked for oral argument, which we were never accorded. Furthermore, the Board in its Decision completely disregarded the absolutely undisputed evidence by failing to find any of the facts favorable to our contentions. In addition, the Board depended chiefly upon cases relating to facts which antedated the military

orders, which constituted the main basis of our case. Under the circumstances, we feel we are entitled to a review of the entire situation by a court that will at least grant us a hearing upon the facts.

You understand, of course, that in the position taken by E. C. Atkins and Company, there is no personal animosity toward you or the Regional Office at Cincinnati, and that the feelings of the executives of E. C. Atkins and Company and myself are, of course, most friendly toward Mr. Richardson, the Union organizer.

I am, with kind regards,

Sincerely yours,

(S) KURT PANTZER.

KFP/TB.
Encls.

442 *Board's Exhibit 105*

Before the National Labor Relations Board for the Ninth Region

Case No. 9-R-1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND ITS AFFILIATE, LOCAL 1683, PETITIONER.

BRIEF OF E. C. ATKINS AND COMPANY

PRELIMINARY STATEMENT

Under date of September 10, 1943, International Association of Machinists, District 90 and its affiliate, Local 1683, hereinafter sometimes referred to as I. A. M., filed its Petition for Investigation and Certification of Representatives of the plant guards of E. C. Atkins and Company at its two Indianapolis, Indiana, plants with the National Labor Relations Board for the Ninth Region at Cincinnati, Ohio (Exh. Board 1-A, Tr. 5). A Notice of Hearing was thereupon issued by Rosemary S. Macke, Acting Regional Director (Exh. Board 1-A, Tr. 5), and a hearing was held at Indianapolis, Indiana, on September 24, 1943, before Trial Examiner Shroyer.

443 At the beginning of the hearing E. C. Atkins and Company, hereinafter sometimes referred to as the Company, moved to dismiss the Petition on the ground that the Company is not an "employer" and the plant guards are not "employees" of the Company under the definitions of those terms in the National Labor Relations Act (Tr. 6). This motion is reprinted in full in the appendix, infra, pages 21-22. The Trial Examiner referred this motion to dismiss to the Board for ruling (Tr. 7).

During the course of the hearing the Company also applied for a subpoena duces tecum directed at F. M. Richardson to produce

certain union records alleged to contain evidence in support of the Company's contention that the Petition should be dismissed (Exh. Company 1, Tr. 11). This application for a subpoena duces tecum appears in the appendix, infra, pages 23–25. The Trial Examiner granted the application with respect to the charter, constitution, and by-laws of the I. A. M. (Tr. 11), but denied the application insofar as it related to the minute book, membership roll, application cards, membership cards, dues book, bank book, check book, cancelled checks, correspondence and other records relating to the purposes, activities and membership of the I. A. M. (Tr. 14). The Company contends that these union records contain evidence that is relevant to material issues in this proceeding and that the Trial Examiner erred in denying its application for a subpoena duces tecum.

This brief is filed on behalf of E. C. Atkins and Company, pursuant to Section 203.9 of the Rules and Regulations of the National Labor Relations Board. The time for filing this brief was extended by telegram to October 11, 1943.

444

THE PARTIES

(1) The Company.—E. C. Atkins and Company is a corporation organized and existing under the laws of the State of Indiana, with two plants in Indianapolis, Indiana. The main plant in Indianapolis, which occupies two entire city blocks and is bounded on the north by South Street, on the west by Capitol Avenue, on the east by Illinois Street, and on the south by Merrill Street, has been in operation since 1857. The Federal Government owns the new armor plate plant employed by the Company in war production at the southeast corner of Twenty-First Street and Northwestern Avenue (Tr. 8).

The Company is engaged in the business of manufacturing and selling saws, tools, and armor-plate. Approximately eighty per cent of the raw materials (consisting principally of steel, castings, and lumber) used in the business of the Company is purchased and shipped in interstate commerce from sources outside the State of Indiana, and approximately eighty per cent of the finished products produced by the Company is sold in interstate commerce to purchasers outside the State of Indiana. During the calendar year 1942, the raw materials used by the Company exceeded $500,000 in value and the gross sales price of its finished products was over $1,000,000. The finished product of the Company is disposed of to the United States Government, jobbers, dealers, subcontractors and direct to manufacturing consumers. During the calendar year 1942 to the date of this hearing, the manufacturing and selling operations of the Company have continued substantially along the same lines as those set forth above for the year 1942 (Tr. 9, 10). The Company admits that it is engaged in interstate commerce within the mean-

445

ing of that term in the National Labor Relations Act (Tr. 10).

(2) I. A. M.—The International Association of Machinists, unaffiliated, is an international union admitting workers in a machine or metal industry to membership (Exh. Petitioner 1, Tr. 44). Local 1683, the particular unit involved in this proceeding, admits to membership employes of concerns other than the Company (Tr. 37, 45) but all of the members of Local 1683 are employed as plant guards (Tr. 41). There is nothing in its constitution or by-laws that authorizes it to organize plant guards (Tr. 46). On August 18, 1943, an I. A. M. representative wrote a letter requesting recognition of that union as the bargaining agent for the plant guards (Exh. Board 3, Tr. 15); the Company did not reply to the letter (Tr. 15) and still declines to recognize the union (Tr. 16). The I. A. M. is the Petitioner for Investigation and Certification of Representatives in this case.

FACTS

The Company employs approximately 1,267 regular employes, of which 1,208 are members of the C. I. O. Union and 59 are members of the Saw Smiths' Local Union (Tr. 82, 83), and it has entered into contracts with both these unions (Exhs. Company 17, 18, 19, 20, Tr. 85, 88). The representation of these employes is not involved in this proceeding. Prior to the time the Company became engaged in war production, it employed from four to six night watchmen (Tr. 88) but it is now required because of
446 its government contracts to pay the salaries of over sixty auxiliary military police or plant guards (Tr. 76, 83, 88–90).

The representation of these plant guards is the subject of controversy in this case. The Company contends that these plant guards are not its employes but are under the control of the United States Army and are therefore employes of the federal government. This point is made clear by the contrast between the status of the Company's regular employes and the auxiliary military police in question which the testimony at the hearing disclosed.

Duties of Plant Guards

The general duties of auxiliary military police are set forth in a letter issued June 7, 1943, by the Continuous Security District Office of the War Department at Cincinnati, Ohio, and signed by Lieutenant Colonel A. C. Rasmussen (Exh. Company 4, Tr. 35). It states on page 2:

"The mission of a guard force of Auxiliary Military Police is:

"a. To provide interior and exterior protection of the plant against sabotage and espionage and natural hazards.

"b. To serve with the Army in providing the protection to the plant and its environs in emergency situations."

Specifically their duties include directing traffic, escorting visitors, watching the gates and entrances, transporting cash within the

plant, observing productions workers and other activities designed to prevent interruption of production (Tr. 21).

447 The nature of these duties requires that plant guards work under conditions that are very different from those of any of the company's regular employes. They wear uniforms (Tr. 20), carry guns (Tr. 20), and salute army officers (Tr. 64), and they have the right to arrest anyone in the plant (Tr. 22, 30, 31, 74). The company issues identification cards to its production employes, officers, directors and other agents (Exh. Company 21, Tr. 94), and requires them to wear identification badges (Tr. 94). In contrast the plant guards carry identification cards issued by the War Department (Exh. Company 3, Tr. 27), and wear arm bands on which are written the words "Auxiliary Military Police" (Tr. 65). Ordinary employes have to have special passes to enter the armor plate division from outside the plant (Exh. Company 14, Tr. 65), to enter the armor plate division from inside the plant (Exh. Company 15, Tr. 66), or to go in and out of the plant grounds during working hours (Exh. Company 16, Tr. 66), but plant guards are not subject to such regulations. The Company does not give any military instruction to its production employes (Tr. 92), but army officers train the plant guards (Tr. 30). The instruction given the auxiliary military police each week consists of lessons in the use of clubs and fists, pistol marksmanship, military courtesy, methods of arrest, control and prevention of fires and similar topics (Tr. 71), and is under the supervision of Lieutenant Scanlon of United States Army (Tr. 30). These facts show the great dissimilarity between the duties of a plant guard and the job of an ordinary production employe.

448 Hiring of Plant Guards

Persons seeking to become auxiliary military police apply at the personnel office of the Company and fill out a regular "Application for Employment" (Exh. Company 5, Tr. 24, 50). A representative of the Company interviews the applicant and submits his name to the military authorities at Cincinnati if he is satisfactory (Tr. 95). However, the army officers make the decision as to whether the applicant will be hired after they have made an independent investigation as to his capacity, integrity and patriotism (Tr. 51, 95). The letter issued June 7, 1943, by the Continuous Security District Office of the War Department at Cincinnati and referred to above clearly states:

"A member of the Auxiliary Military Police may not be employed, dismissed, or may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant guard force would be impaired and declines to give his approval thereto" (Exh. Company 4, Tr. 35).

Applicants who are approved must take an oath to support the Constitution of the United States and the authorized military authorities (Tr. 20, 27, 50), and must sign an "Agreement between the United States of America and ———— Plant Guard" on the form prescribed by the government (Exh. Company 2, Tr. 25). If the plant guard refuses to sign this agreement, his employment will be terminated (Exh. Company 4, 35, 54). Finally, the army issues a "Certificate of Enrollment" signed for the Commanding General, Fifth Service Command, by Lieutenant Colonel Rasmussen (Exh. Company 6, Tr. 55).

449 Supervision and Control of Plant Guards

The supervision of plant guard forces in this area has been provided for as follows:

"The Commanding General of the Fifth Service Command has designated the Chiefs of the Continuous Security Districts as the Commanding Officers in their various districts. * * * They then appoint District Plant Guard Officers, who are in direct charge of plant guard forces of such plants in their districts." (Letter issued June 7, 1943, by the Continuous Security District Office of the War Department at Cincinnati, Ohio; Exh. Company 4, Tr. 35.)

Lieutenant Colonel A. C. Rasmussen is District Chief (Exh. Company 4) and Captain B. R. Wetenhall is District Plant Guard Officer for the Cincinnati area (Exh. Company 8). The auxiliary military police at each of the Company's plants are under the direction of a Chief, who has four lieutenants to assist him (Tr. 51).

At present the work of the plant guards is controlled by three General Orders issued by Captain Wetenhall in May of this year (Exhs. Company 10, 11, 12, Tr. 62). The nature of the control which the army maintains over the auxiliary military police is clearly indicated by the following paragraphs from General Order No. 1 (Exh. Company 10):

"Pursuant to the orders of the War Department, the guard forces at this plant were activated as Auxiliary Military Police, and for military purposes will be commanded, drilled, and instructed as military units.

450 "All members of the guard force are subject to the Articles of War and may be court-martialed or otherwise punished for violations thereof.

"A commissioned officer of the Army of the United States has been placed in command. Although in command at all times, this officer has not superseded the civilian guard officers and normally will exercise direct control only in matters relating to military instruction and duties as Auxiliary Military Police.

"The mission of this guard force is to provide protection for this plant. In addition to its normal functions, the force or any mem-

ber thereof, whether on or off duty, is available for military use in any emergency, whether it be the result of flood, fire, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission."

Within each individual plant the Chief supervises the work of the plant guards. He determines whether the men will automatically trade shifts or will always work the same hours (Tr. 70); he promotes men without reference to seniority (Tr. 67, 77) and the men have no recourse from his disciplinary action (Tr. 67). Although the Chief and the men make every effort to co-operate with the plant management (Tr. 64), they are not subject to the orders of the Company's officers (Tr. 69, 73, 90); it is understood throughout the plant that the auxiliary military police are under the military authorities and are not responsible to the foremen or other Company employes (Tr. 91). The Chief in turn re-
451 ceives his instructions from Captain Wetenhall, the District Plant Guard Officer (Tr. 59, 63), and he frequently carries on correspondence with Captain Wetenhall concerning the problems that arise in connection with his work (Tr. 79).

Discharge of Plant Guards

General Order No. 1 issued by Captain Wetenhall and referred to above provides as follows with respect to the discharge of plant guards:

"No member of the Auxiliary Military Police may resign without the written approval of the District Plant Guard Officer" (Exh. Company 10).

A plant guard may be relieved of his duty temporarily by the Chief of the plant unit or the Company, but neither has the authority to discharge him permanently (Tr. 58). Upon termination of a plant guard's employment the army awards him a "Certificate of Meritorious Conduct" (Exh. Company 7, Tr. 57) unless he is discharged for misconduct, absence without leave, drunkenness or for some military reason, in which event only a formal release from his agreement with the United States Government is issued (Exh. Company 8, Tr. 58).

The above analysis of the record has demonstrated that the duties of the auxiliary military police are of an extremely different nature from those of ordinary production employes and that as a result the hiring, supervision, control and discharge of such employes is handled by the regular military authorities, who are obviously better qualified to direct plant protection activities than the plant management.

452 QUESTIONS PRESENTED

I. Does the relationship of employer and employee exist between auxiliary military police engaged in guarding a defense plant and the company that operates the plant.

II. Is it a denial of due process under the Federal Constitution for the National Labor Relations Board to refuse to issue a subpoena duces tecum for union records at the request of an employer when the union records contain relevant evidence regarding material issues in a representation case.

453 ARGUMENT

I. The relationship of employer and employee does not exist between the auxiliary military police and E. C. Atkins and Company under the definition of "employer" in Section 2 (2) and "employee" in Section 2 (3) of the National Labor Relations Act.

The protection of defense plants against sabotage and espionage requires employees with skills that are of a very different nature than those of ordinary production employees. As a result the training and supervision of auxiliary military police has been taken over to a large degree by the Army of the United States. The question is therefore presented whether a company operating a defense plant has relinquished so much of its control over its plant guards to the Army that the relationship of employer and employee no longer exists within the definition of those terms in the National Labor Relations Act (29 U. S. C. A. § 152).[1] In this proceeding it is the contention of the Company that since the hiring, training, supervision and discharge of auxiliary military police depends upon the decisions of Army officers, the Company no longer controls them and is not their employer. If this is the case, the Petition for Investigation and Certification
454 of Representatives should be dismissed, since it is obvious that the Federal Government, the other possible employer involved, is not included within the definition in the Act.

The problem of determining whether the employer-employee relationship exists in a particular situation has also arisen in connection with the Fair Labor Standards Act, which defines the term employee in a similar manner (29 U. S. C. A. § 203).[2]

In Bowman v. Pace Co., 119 F. (2d) 858 (C. C. A. 5, 1941), the court decided that a watchman was not an employee of the wholesale grocery company whose premises he guarded, although he was under the direction of the company to some extent, because

[1] SEC. 2. When used in this Act—
(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States or any State or political subdivision thereof * * *.
(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise. * * *."

[2] SEC. 3. As used in this Act—
(e) "Employee" includes any individual employed by an employer.

he was hired and paid by a third person and his discharge was the third person's affair. Likewise in Williams v. United States, 126 F. (2d) 129 (C. C. A. 7, 1942), the court emphasized the factors of direction, hiring, payment and discharge mentioned in the Bowman case and held that no relation of "employer and employee" existed for purposes of the federal social security tax. The court said:

"* * * There seems to be no dispute but that the employer-employee relationship exists only where the person, for whom the work is done, has the right to control and direct the work, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. Singer Mfg. Co. v. Rahn, 132 U. S. 518, 10 S. Ct. 175, 33 L. Ed. 440; Jones v. Goodson, 10 Cir., 121 F. 2d. 176, 179."

455 "We have already concluded, not inconsistent with the findings of the court below, that the establishments had no right to hire or discharge the members of the orchestra. To our mind, this circumstance alone comes near being decisive. It is difficult to conceive of any employer-employee relationship without such a right on the part of the employer."

In Texas Co. v. Higgins (C. C. A. 2, 1941), 118 F. 2d 636, Judge Learned Hand adopted the same position:

"Were the question presented to us for the first time, we should have no doubt that Thomas and his assistants were not 'employees' of the plaintiff; the Act appears to take over the term as the common law knew it, and at common law they would not be employees. The regulation is in harmony with this assumption, for it enumerates the generally accredited determinants in such cases, of which the most important is the putative employer's control over the employee's business."

The Indiana courts have likewise attached importance to the right of control in deciding whether the relationship of employer and employee is present. In Mid-Continent Petroleum Corporation v. Vicars, 47 N. E. (2d) 972 (Indiana Supreme Court, 1943), the question was whether an injured workman was the employee of the lessor or the employee of the lessee of an oil station. The court held that the plaintiff was not the employee of defendant lessor and quoted with approval the following language from Marion Shoe Co. v. Eppley, 181 Ind. 219, 104 N. E. 65 (1914):

"The real test is: was appellee, at the time he sustained
456 his injury, under the power and control of appellant and subject to its orders and directions in the doing of the work at hand."

The above cases indicate that at least four factors must be considered in determining whether an employer-employee relationship exists. First, who hires the worker? Although applicants are interviewed at the E. C. Atkins and Company plant, the military authorities in Cincinnati make the final decision (Tr. 51, 95).

Second, who supervises their work? In the instant case the Chief in the plant unit directs the men (Tr. 67, 70, 77) and he is responsible to the Army officers (Tr. 59, 63, 79). Third, who discharges the guards? The Company and the Chief in the plant unit may suspend a member of the auxiliary military police but the military authorities actually discharge him (Tr. 58, Exh. Company 10). Fourth, who pays the men? The Company pays the plant guards (Tr. 23). It is submitted that the first three criteria (hiring, supervision, and discharge) clearly show that the federal government is the employer of the auxiliary military police and that these three factors overbalance any inference based on the method of payment that the Company employs the men.

The question concerning the existence of an employer-employee relationship has not been squarely presented in any previous case before the National Labor Relations Board. In the Matter of Budd Wheel Company, Case No. R-5787 (September 17, 1943), the Board reviewed the prior cases and decided that the plant protection force there involved was an appropriate unit for purposes of collective bargaining. However, the Board found that the "Company still hires and discharges the guards" and
457 the situation is thus entirely different from that presented in this proceeding. Here the record clearly shows that the ultimate right to hire and fire rests with the army officers, *supra*, pp. 7 and 10, so that the Budd Wheel case is not applicable.

Another recent case involving plant guards is In the Matter of Dravo Corporation, Case No. R-5570 (August 30, 1943). The only reference in the opinion of the Board to the character of the relationship between the guards and the Company is the statement that "the wages and duties of this group of personnel remained unchanged after their induction so that it is apparent that the proximate relationship of employer and employee still exists between the Company and the guards." In the instant case Mr. Cyrus E. Wood, personnel director for the Company, pointed out that whereas the Company formerly employed six night watchmen it now pays over sixty auxiliary military police because of its war production (Tr. 88). The hiring, direction and firing of these new plant guards is no longer within the control of the company, supra, pp. 7–10, and it cannot reasonably be said that there has been no substantial change in this job as a result of the supervision of the military authorities.

The earlier decisions of the Board are all based on the fact that after the militarization of the plant guards the Company still had the right to discipline them, or to discharge them for cause, or to hire new guards. Matter of Bethlehem Steel Company, 46 N. L. R. B. 794 (January 6, 1943); Matter of Johns-Manville Products Corporation, 45 N. L. R. B. 33 (October 22, 1942 Matter of Campbell Soup Company, 45 N. L. R. B. 6 (October 22, 1942); Matter of Chrysler Corporation, Highland Park Plant,

458 44 N. L. R. B. 881 (October 2, 1942). At the plant of E. C. Atkins and Company the Chief of the auxiliary military police disciplines the men (Tr. 67) and he is not subject to any direction by the Company (Tr. 69, 73, 90); the Company can only relieve a guard from duty temporarily (Tr. 58), and all discharges require the written approval of the District Plant Guard Officer, Captain Wetenhall (Exh. Company 10); army officers make the final decision with respect to the hiring of applicants for the job of auxiliary military police (Tr. 51, 95, Exh. Company 4). The previous decisions of the Board are therefore not in point. Since the federal government and not the army employs the plant guards, the Petition for Investigation and Certification of Representatives should be dismissed.

Finally, the purpose of the auxiliary military police is to prevent interruptions of production (Tr. 73). General Order No. 1 (Exh. Company 10) issued by Captain Wetenhall, specifically states that no conflicting interest of any kind will be permitted to interfere with the successful accomplishment of the guards' mission. Yet by its very nature unionization and collective bargaining between the representatives of the auxiliary military police and the Company may produce situations incompatible with efficient supervision of the work by the military authorities. A strike resulted at the Johnsonville, Pennsylvania plant of the Brewster Aeronautical Corporation because the union protested the assignment of guards to duty without regard to seniority rights (War Labor Board decision of September 25, 1942), and another recent War Labor Board case followed the demands of the union leaders of plant guards for a union maintenance contract at
459 a war plant. (In re Virginia Rubatex Division, Great American Industries, Case No. 111–476–R, August 27, 1943). Similar union demands at the E. C. Atkins and Company plant would interfere with the broad control which the military authorities now exercise over the hiring, supervision, and discharge of auxiliary military police.

II. The Trial Examiner erred in denying the Company's application for a subpoena duces tecum directed at the union leader to produce the minute book, membership roll, application cards, membership cards, correspondence and other records relating to the purposes, activities, and membership of I. A. M.

The chief obstacle to unionization of the plant guards involved in this case is the broad control which the military authorities possess over their activities. It is the contention of the Company that the demands of the union may conflict with the mission of the auxiliary military police in such a manner that production will be interrupted. In this connection the activities of this union in the other defense plants in which it has members (Tr. 37, 45) is material evidence, but the Company was prevented from introducing such evidence by the refusal of the Trial Examiner

to grant its application for a subpoena duces tecum (Tr. 14). The record does not show whether the union has or has not demanded seniority rights, maintenance of membership contracts, and other privileges which interfere with the protection of the defense plants. Likewise the records of I. A. M. contain the purposes for which Local 1683 is organized and if they are sufficiently definite,
460 they might show that it is attempting to organize employes of the United States, which is expressly prohibited by the National Labor Relations Act.

It is a well established principle of administrative law that the right to a full hearing implies the privilege of introducing all evidence which is competent, material, and relevant to the issues and argument. Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 59 S. Ct. 206 (1938); Interstate Commerce Commission v. Chicago R. I. P. Ry. Co., 218 U. S. 88, 30 S. Ct. 651 (1909); Ohio Bell Telephone Company v. Public Utility Commission, 301 U. S. 292, 57 S. Ct. 724 (1936); National Labor Relations Board v. Indiana and Michigan Company, U. S. Supreme Court, January 19, 1943. Refusal of an agency to issue subpoenas to a party to an administrative proceeding is merely one method of preventing him from introducing competent evidence. The refusal of the Trial Examiner to issue the subpoena requested by the Company, therefore, deprived the Company of a fair hearing and constituted a denial of due process under the Federal Constitution.

The Trial Examiner also admitted in evidence over the objection of the Company a "Statement of Field Examiner Concerning Claims of Authorization for the Purpose of Representation" dated September 1, 1943 (Exh. Board 4, Tr. 18). This is an important piece of evidence inasmuch as the Petition for Investigation and Certification of Representatives filed by I. A. M. should be dismissed if the I. A. M. does not have a substantial number of members in the plant. The Company, however, was not permitted to cross-examine the individual who made the statement or the data on which it was based.

461 The material upon which an agency or other party proposes to rely as established fact, including the data upon which it is based, should be open for inspection by interested parties. The United States Supreme Court recognized this principle as early as 1912 when it said:

"* * * All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense." Interstate Commerce Commission v. Louisville and N. R. Co., 227 U. S. 88, 33 S. Ct. 185 (1913).

The failure of the Trial Examiner to sustain the Company's objection to this secret evidence was material error and deprived

the Company of a fair hearing. Crowell v. Benson, 285 U. S. 22, 52 S. Ct. 285 (1932).

CONCLUSION

The Petition of I. A. M. for Investigation and Certification of Representatives of auxiliary military police should be dismissed.

Respectfully submitted.

BARNES, HICKAM, PANTZER AND BOYD,
Attorneys for E. C. Atkins and Company,
1313 Merchants Bank Bldg., Indianapolis, Indiana.
KURT F. PANTZER,
LEWIS D. SPENCER,
Of counsel.

462 APPENDIX

Before the National Labor Relations Board for the Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND ITS AFFILIATE, LOCAL 1683, PETITIONER

MOTION OF E. C. ATKINS AND COMPANY TO DISMISS PETITION FOR CERTIFICATION

Comes now E. C. Atkins and Company, one of the parties to this proceeding (hereinafter referred to as the "Company"), and moves to dismiss the Petitioner's Petition for Investigation of Certification of Representatives herein for the following reasons:

1. E. C. Atkins and Company is not and cannot be an employer within the meaning of Section 2, Subsection 2, of the National Labor Relations Act with respect to auxiliary military police who wholly constitute the bargaining unit set forth in Item 4 of the Petition for Investigation.

463 2. The employes referred to in the petition for investigation can not come within the definition of the word "employes" under the provisions of Section 2, Subsection 3, of the National Labor Relations Act with respect to the alleged employer, E. C. Atkins and Company.

3. The relationship of employer and employee with its various interests has never set in and is not existing at this time with respect to the auxiliary military police referred to in the Petition for Investigation and E. C. Atkins and Company.

Wherefore, E. C. Atkins and Company respectfully prays that the Petitioner's Petition for Investigation and Certification of Representatives be dismissed.

E. C. ATKINS AND COMPANY,
By KURT F. PANTZER, *Attorney.*

464 United States of America

Before the National Labor Relations Board, Ninth Region

Case No. 9–R–1200

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE, LOCAL 1683, PETITIONER

APPLICATION FOR SUBPOENA DUCES TECUM DIRECTED AT F. M. RICHARDSON TO PRODUCE UNION RECORDS

Comes now E. C. Atkins and Company, one of the parties to this proceeding, and respectfully applies for a subpoena duces tecum directed at F. M. Richardson, Business Representative, International Association of Machinists, District 90, and their affiliate, Local 1683 (hereinafter referred to as the "Union"), one of the parties to this proceeding, to produce the following documents:

1. Charter, Constitution and By-Laws of the Union;

465 2. Minute book, membership roll, application cards, membership cards, dues books, bank book, check book, cancelled checks, correspondence, and other records relating to the purposes, activities, and membership of said Union;

in order that E. C. Atkins and Company may establish (a) the identity of the Union, within the purview of Section 2, subsection (5) of the National Labor Relations Act; (b) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana, plants, excluding sergeants, lieutenants, captains, and chief," are "employees" within the purview of Section 2, subsection (3) of the National Labor Relations Act; (c) whether "all plant guards employed by E. C. Atkins and Company, at its two Indianapolis, Indiana, plants, excluding sergeants, lieutenants, captains, and chief," have "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection," within the purview of Section 7 of the National Labor Relations Act; (d) whether it is an unfair labor practice for E. C. Atkins and Company "to refuse to bargain collectively with the representatives of "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana, plants, excluding sergeants, lieutenants, captains, and chief," within the purview of Section 8 subsection (5) of the National Labor Relations Act; and (e) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana, plants, excluding sergeants, lieuten-

466 ants, captains, and chief," can properly be found to be a "unit appropriate for the purposes of collective bargaining."

within the purview of Section 9, subsection (b) of the National Labor Relations Act.

E. C. ATKINS AND COMPANY,
By KURT F. PANTZER, *Attorney.*

467 *Respondent's Exhibit 101*

United States of America

Before the National Labor Relations Board, Ninth Region

Case No. 9–C–1982

IN THE MATTER OF E. C. ATKINS AND COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

APPLICATION FOR SUBPOENA DUCES TECUM DIRECTED AT F. M. RICHARDSON TO PRODUCE UNION RECORDS

Comes now E. C. Atkins and Company, one of the parties to this proceeding, and respectfully applies for a subpoena duces tecum directed at F. M. Richardson, Business Representative, International Association of Machinists, District 90, and their affiliate Local 1683 (hereinafter referred to as the "Union"), one of the parties to this proceeding, to produce the following documents:

1. Charter, Constitution and Bylaws of the Union;

2. Minute book, membership roll, application cards, membership cards, dues books, bank book, check book, cancelled checks, collective bargaining agreements executed by and between the Union with other plants in the Indianapolis area covering
468 the plant guards on duty at such plants, copies of grievances filed under such collective bargaining agreements, records of the hearings arising under the same, and decisions made with respect to such grievances by the Union and the respective employer, or the umpire, in the case; copies of seniority lists posted under such collective bargaining agreements; copies of orders affecting the wages, discipline, disputes, etc., arising in said various plants, as rendered by the National Labor Relations Board, the National War Labor Board, and the various trial examiners and subsidiary tribunals; correspondences; and other records relating to the purposes, activities and membership of said Union; in order that E. C. Atkins and Company may establish (a) the identity of the Union, within the purview of Section 2, subsection (5) of the National Labor Relations Act; (b) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," are "employees" within the purview of Section 2, subsection (3) of the National Labor Relations Act; (c) whether "all

plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," have "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other
469 mutual aid or protection," within the purview of Section 7 of the National Labor Relations Act; (d) whether it is an unfair labor practice for E. C. Atkins and Company "to refuse to bargain collectively with the representatives of all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," within the purview of Section 8, subsection (5) of the National Labor Relations Act; (e) whether "all plant guards employed by E. C. Atkins and Company at its two Indianapolis, Indiana plants, excluding sergeants, lieutenants, captains and chief," can properly be found to be a "unit appropriate for the purposes of collective bargaining" with E. C. Atkins and Company, within the purview of Section 9, subsection (b) of the National Labor Relations Act; and (f) whether the provisions of the collective bargaining agreements, statements of grievance, seniority lists, and orders entered by the National Labor Relations Board and National War Labor Board, covering the units of "plant guards" subject to organization by the Union at other plants in the Indianapolis area do not contain provisions which are incompatible with the service of the auxiliary military police at the plants of E. C. Atkins and Company in the military service.

E. C. ATKINS AND COMPANY,
By KURT F. PANTZER, *Attorney.*

471 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8669—October Term, 1945, April Session, 1946

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

E. C. ATKINS AND COMPANY, RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board

Opinion

Filed May 31, 1946

Before SPARKS, MAJOR, and KERNER, Circuit Judges.

MAJOR, Circuit Judge. This matter is before us on motion of petitioner to enter a decree enforcing its order issued against

respondent on May 30, 1944. The same request was denied by this court on February 27, 1945. National Labor Relations Board *v.* E. C. Atkins and Company, 147 F. 2d 730. We see no reason to reiterate the facts involved, the questions presented, and the reasons for our refusal to enforce as they are fully disclosed in our opinion rendered at that time.

On June 4, 1945, the Supreme Court of the United States granted a writ of certiorari to review the aforesaid judgment of this court, vacated the judgment and remanded the case "for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved, and the effect thereof on the Board's orders" (325 U. S. 838). On February 23, 1946, the parties entered into a stipulation as to the facts concerning such demilitarization, including the time and manner thereof as well as the present status of those thus demilitarized.

472 We formerly refused to enforce the Board's order on the ground that, since the alleged employees (plant guards) were militarized, they were not employees of respondent within the meaning of § 2 (3) of the National Labor Relations Act. Alternatively, we held that even if the guards, despite their militarized status, be considered employees of respondent, enforcement of the Board's order "should not be allowed * * * (because) to do so would be or is likely to be inimical to the public welfare."

We have considered the facts relative to the changed status of the plant guards by reason of their demilitarization and are of the opinion that they are irrelevant to the issues which we have heretofore decided adversely to the Board. Certainly such is the case with reference to our decision that the plant guards were not employees of respondent within the meaning of the Act. In fact, the irrelevancy of the changed circumstances as to this issue is conceded by the Board. We are urged by the Board, however, to reverse our former decision and to hold that the plant guards were employees. We have also given this matter further consideration and are of the opinion that our former decision in this respect was correct, and we reaffirm it.

Although we are doubtful that the facts concerning the demilitarization of the plant guards and their changed status as a result thereof are material to our alternative holding that the enforcement of the Board's order "would be or is likely to be inimical to the public welfare," there is no necessity for decision on our part in this respect. This is so for the reason that the latter issue is immaterial in view of our decision that the plant guards were not employees.

We therefore reinstate our former judgment in this matter for the reasons stated in our former opinion, and again deny the Board's motion for enforcement of its order.

473 In United States Circuit Court of Appeals

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. OTTO KERNER, Circuit Judge.

8669

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

E. C. ATKINS AND COMPANY, RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board

Judgment

MAY 31, 1946.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and on Motion for enforcement of decree pursuant to mandate of the Supreme Court of the United States which remanded this cause to this Court for further consideration of alleged changed circumstances with respect to the demilitarization of the employees involved and the effect thereof on the Board's orders.

On consideration whereof, it is ordered and adjudged by this Court that the former judgment of this Court in this matter be reinstated for the reasons stated in our former opinion, filed February 27, 1945, and that the Board's motion for enforcement of its order be again denied.

474 (Clerk's certificate to foregoing transcript omitted in printing.)

475 (Clerk's certificate of transmittal omitted in printing.)

476 In the Supreme Court of the United States

Stipulation and addition to transcript of record

Filed Oct. 7, 1946

It is stipulated by and between the parties hereto that the documents described below, which were before the Circuit Court of Appeals for the Seventh Circuit in the above-entitled case, and which were inadvertently omitted from the transcript of record filed in this Court, should be added to the transcript of record for the consideration of this Court:

1. Petition for enforcement of an order of the N. L. R. B. filed bythe Board with the C. C. A. on or about August 24, 1944.

2. Charge filed by the International Association of Machinists with the N. L. R. B. on December 22, 1943.

3. Oral argument before the N. L. R. B. on May 11, 1944.

4. "Motion of Respondent to require petitioner to conform appendix and brief to the rules of this Court" filed with the C. C. A. Sept. 26, 1944.

5. Memorandum of N. L. R. B. in opposition to respondent's motion to require the Board to supplement its appendix and to strike certain portions of its brief filed with the C. C. A. on October 2, 1944.

6. Reply of respondent to answer memorandum of petitioner respecting motion of respondent to require petitioner to strike addendum and all references to addendum from petitioner's brief filed with the C. C. A. October 5, 1944.

477 7. Order of court overruling motion entered Oct. 9, 1944.

8. Opinion of C. C. A. in this case rendered Feb. 27, 1945.

9. Order of the C. C. A. in this case entered Feb. 27, 1945.

J. Howard McGrath,
J. Howard McGrath,
Solicitor General.

Dated September 27, 1946.

Frederic D. Anderson,
Counsel for Respondent.

Dated October 3, 1946.

479 [File endorsement omitted.]

Board's Exhibit 101–A

United States of America

Before the National Labor Relations Board, Ninth Region

Case No. 9–C–1982

In the Matter of E. C. Atkins and Company *and* International Association of Machinists, District 90, and Their Affiliate, Local 1683, Affiliated With the American Federation of Labor

Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that E. C. Atkins and Company at Plant No. 1, 402 South Illinois Street, Plant No. 2, 21st and Northwestern, Indianapolis, Indiana, employing 56 workers in Guard Duty, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that on December 20, 1943, it, by letter through its officers and agents, refused to bargain collectively with the authorized representatives of the International Association of Machinists, District 90, and their affiliated, Local 1683, affiliated with the American Federation of Labor, a labor organization chosen by a majority of the plant guards at the company's two Indianapolis Plants, excluding the Chief and Lieutenants and all other

supervisory employees with authority to hire, promote, discharge, discipline and otherwise effect changes in the status of employees or effectively recommend such action, in an election held under the auspices of the National Labor Relations Board on November 17, 1943, for collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the act set forth in the paragraph above, it, by its officers and agents has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90 AND THEIR AFFILIATE LOCAL 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR,
By Frank M. Richardson,
FRANK M. RICHARDSON,
Business Representative,
49½ South Delaware Street,
Indianapolis, Indiana. Ma. 8103.

Subscribed and sworn to before me this 22nd day of December 1943 at Indianapolis, Indiana.

/S/ John C. Getreu
JOHN C. GETREU,
Field Examiner, Ninth Region.

480 [Clerk's certificate to foregoing paper omitted in printing.]

483 Before the National Labor Relations Board

Case No. 9-C-1982

E. C. ATKINS AND COMPANY, *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 90, AND THEIR AFFILIATE LOCAL, 1683, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

Transcript of oral argument

815 CONNECTICUT AVE. NW.,
Washington, D. C., May 11, 1944.

The above-entitled matter came on for oral argument pursuant to notice at 10:30 a m.

Before Gerard Reilly, presiding; John M. Houston, member.

Appearances: Kurt F. Pantzer, 1313 Merchants Bank Building, Indianapolis, Indiana, appearing on behalf of the Company; L. O. Thomas, Machinists Building, Washington, D. C., appearing on behalf of the Union.

484 PROCEEDINGS

Mr. REILLY. The Board will now hear oral argument in the E. C. Atkins and Company case, file No. 9–C–1982. The case is here on Respondent's exceptions to the Trial Examiner's Report. Mr. Pantzer, are you representing the Respondent?

ORAL ARGUMENT OF MR. KURT F. PANTZER

Mr. PANTZER. If it please the Board, this case is here on exceptions filed to the Examiner's Report finding that the company is guilty of an unfair labor practice in failing to bargain with the Machinists Union who have been organized. The location in dispute in this case is therefore the Indianapolis location.

One of the plants is the South Illinois Street plant in which the company prior to the war manufactured principally saws. That plant is owned by the company. The other plant is the Fall Creek Ordnance plant, the land and buildings of which are owned by the government and then leased to the company in order to ensure production space for the manufacture of armor plate. The company has had pleasant relations with the unions representing its employes in the past, and we have, may it please the Board, repeatedly stated at the hearings, both in the representation case and the unfair labor practice case that we intend to have friendly relations with this union when, if, and as this rather technical point which we are raising, and on which I understand the
485 mind of the Board is foreclosed, has been finally decided.

Mr. Richardson, the organizer for the Machinists in Indianapolis, is a grand person and no better counsel for the organization could be found.

Mr. REILLY. We have before us the same question that was raised in the representation case with regard to this unit of guards, and is it your position that this case is distinguishable in any respect from the Grable case or the Yellow Truck & Motor Coach case or is it your position that those cases should be overruled?

Mr. PANTZER. Well, in the first place, may it please your Honor, we take the position that so far as the facts states in your opinions in the Grable case, the Phelps-Dodge case, the Aluminum case, and the Truck case are concerned you have not considered, so far as the opinion goes, the facts which are pregnant in this record. In addition we claim that those cases should be overruled.

Mr. REILLY. Yes.

Mr. PANTZER. Now, we do not have available in Indianapolis records in those cases and I have never had one of my assistants

come to Washington to examine them. I do not know whether they would be available for such an examination. Now, does that state our position clearly?

Mr. REILY. I notice in your brief you rely also in part upon the Court of Appeals decision in the Hearst Publications
485 case, you were aware that that decision was reversed recently by the Supreme Court?

Mr. PANTZER. Very much aware.

Mr. REILLY. Yes.

Mr. PANTZER. But we again feel that if it was a question of fact which was decided in the first case that there must be a question of fact decided in this case. The facts in the Hearst case are in fact so different from the facts in this case that except for the one ruling that this Board can ex cathedra find that the relationship of employer-employe exists in fact and which at common law it did not exist, the Hearst case has no application to this case. Now, we do, however, want a thorough reconsideration of the principles of agency law in the particular case to the extent that administrative expediency warrants it.

Now, we have had, at that plant, continuous friendly relations with other unions. We, for instance, have had a closed shop saw smiths union for 40 years, one of the oldest guild unions in Indianapolis. There are 59 saw smiths, additional apprentices and by an order of this Board entered a year and a half ago in another representation case, not to be confused with this case, it was held that the press-brake operators who help straighten armor-plate belonging within the jurisdiction of the saw smiths closed shop union, rather than the C. I. O. union shop union. The C. I. O. Union has been with us since 1937 and represents some 2,000
487 production employes in the two Indianapolis units and is, as I have stated, a union shop. In connection with our negotiations with both of those unions it was expressly agreed that watchmen would not be a part of the bargaining unit. Before we took on army work we had from four to six watchmen. When we switched over to war contracts, first in the South Illinois Street plant and subsequently after the government had constructed and leased to us the Fall Creek Ordnance Plant we were required to maintain 64 military police and pay their wages. The record shows that the government required us to pay their wages. That does not appear as I read any one of the other cases in your other records.

Now, that is the sole incident, the sole conventional incident, of the relationship between employer and employee that exists in this case.

Mr. HOUSTON. Do I understand your position—this is a little bit different to what Mr. Reilly asked you—that these men you claim are under the jurisdiction of the War Department, and the only connection you had with them was to pay their wages?

Mr. PANTZER. That is right. And the only relationship upon which this Board can base a finding that the employer-employe relationship existed is that sole incident of wage pay. The wages are, as the record shows, as we brought out in our own testi-
488 mony, paid by checks of E. C. Atkins & Company but as does not appear in the other records the clauses in our military contracts require us to maintain these auxiliary military police at our expense or we don't get the contracts and as the Chief of the Military Police explained on the stand we are required to pay those wages by the government. Now, no other incidents of the employer-employe relationship exists here. The right to hire does not exist. The right to fire does not exist. The right to discipline does not exist. The right to instruct and to command obedience with the respect of the details of carrying out a plant guard's work does not exist. The right to consider grievances on the part of plant guards does not exist. There is absolutely no right of seniority based on length of service. The right of promotion is inherent in the armed forces in Cincinnati, Ohio, as the record shows. The right of demotion springs from Cincinnati, Ohio. With the sole exception of the incident that technically the check comes from them no other incident of the relationship of employer-employe as we know it at common law or under any other decision pursuant to statute which can be called to attention exists in this case. In other words, if the Board finds upon the facts in this case that the employer-employe relationship exists it does decided violence to the facts; and understand, your Honor, I respect your other decisions. I have other clients in Indianapolis, for instance, organized by the Air Force. In the case of
489 those clients the plant guards have never taken the oath of office as a soldier in the Auxiliary Military Police. They are not subject to court martial. Their employment is finally made and their discharge is finally made by the employer and their wages are paid by the employer. Promotion may be made according to seniority or according to ability or according to any other arbitrary criteria that the employer desires to follow.

Mr. HOUSTON. In your case, how are these men engaged, who engages them and who handles grievances, and are they promoted and who discharges them?

Mr. PANTZER. With respect to the most instances, sir, with respect to the method of hiring and firing, hiring may be made in the first instance by the War Department as may firing; but generally hiring is in the first instance initiated by the employer. No one of the 64 plant guards was ever an employe of the company before the taking on of war work and the signing of the contracts with the government to maintain the Auxiliary Military Police as watchmen for the government in the plant.

The application for employment is signed in the Personnel Office of the company. It is then forwarded and the man is put

to work on probation. The application is then forwarded to Cincinnati and an F. B. I. man investigates the record of the employe thoroughly and finally after an investigation made upon that recommendation of hiring by the Personnel Di-
490 rector, the man is either engaged or dismissed. If he is engaged he then signs the contract with the government which also existed in the Aluminum case, swears the oath of office to support the military and to be governed by the Army Regulations, is issued his commission in the Military Police, a photostatic copy of which is in the record. He is issued his identification card signed by the Major in Cincinnati, not an identification card signed by the Personnel Department of the Atkins Company, and is solely subject to the rules and regulations of the plant.

Now, in that respect, Mr. Thomas, your Mr. who went on the stand first, bore out our contention just as completely as ours did.

I want to call the attention of the Board to the one possible misunderstanding in the record. The Union's witness, Mr. Gans, said that with respect to general orders of performing work, the orders of the military in Cincinnati were paramount but with respect to special orders for performing work the orders of the "company" were paramount. We were amazed at that testimony. It developed on cross-examination that what he meant was the "military company of military police," which has a Lieutenant Scanlon in charge of it in Indianapolis. So the first two or three times you come across the word "company" in the record don't be misled by coming to the conclusion that that means
491 the employer. It means the Military Police Company as his cross-examination amply shows.

Now, with respect firing, a recommendation from the company will also be considered but final firing is done from Cincinnati either by means of an Honorable Discharge Certificate which you will find in the record, or a Dismissal for Cause, which is not a certificate but a more informal document something like a letter, a copy of which you will also find in the record.

Mr. REILLY. I can understand, of course, why the company could not sever their military status, if that should be required by reason of this oath; but suppose that there was some guard whose conduct and character was so flagrant that they wouldn't want to have him around the plant, and while it is true the company's action, as I say, wouldn't sever his military status, wouldn't it effectively terminate any connection he had with that plant?

Mr. PANTZER. Well, I am coming to that. You are bringing up the one sore spot, my one complaint about the two hearings. I received the most courteous consideration of Trial Examiner Shroyer in the first case and Trial Examiner Persons in the second case, the Unfair Labor Practice case except that both of them denied my request for subpoena duces tecum to have the union,

which is a local organizing not merely the Atkins plant but a union organizing as well the Lyman-Harrington plant,
492 the Curtis Wright plant, the Mertz Engineering plant and I believe one other plant, a tool and die manufacturing company plant, to have the union brings into the hearing its existing collective-bargaining agreement with those four plants in order that we might show that the nature of the union relationship ran completely counter to the relationship imposed by the military authorities in Cincinnati upon our plant guards. Now, the only way in which I can show to your Honors that the relationship could not exist—and I think it was to that your your question was directed; am I right?

Mr. REILLY. That is right; yes.

Mr. PANTZER. If we read from the proposed collective-bargaining agreement submitted by the union—now, I am not going to read it at length. Let me merely summarize certain of the clauses and your assistant can then see whether or not my statements are honest.

Mr. THOMAS. Is that an exhibit in the case?

Mr. PANTZER. That is an exhibit in the case. In other words, Mr. Richardson, the record shows submitted to us a proposal for collective bargaining a copy of which I have in my hand and that's an exhibit in the unfair labor practice case. I do not have the number but I know you can find that, Mr. Thomas.

In the first place, the union asks for a union shop effective on 30 days after employment and demands therefore that we
493 dismiss. We have no power to dismiss these employes from our services—any employes who have not joined the union. Now, you may say that possibly we could have negotiated so as to avoid a union shop, but Mr. Richardson, the union organizer, testified that three of the four plants under his organization had union or closed shop contracts. In the second place, the proposal specifies: "It shall be the duty of the shift committeeman to take up with the proper company officer grievances or suggestions from employes on his shift or crew and also states that representatives of District No. 90 and the International Union may be present at all—at any or all of the meetings for the purpose of collective bargaining or the handling of grievance matters." That is almost the situation in the Russian Army but not yet the situation in the American Army. In other words, the testimony shows that the Army has the absolute right to discipline those employes. There isn't any question about it in the record. Now, whatever the facts may be, Sir, in your Aluminum Company record, or in your other records, or in the Hearst case with respect to denying a newsboy or denying a plant guard, respectively, the right to work, the company doesn't have it. That inheres in the military authority and we have no right to make a contract binding the military authorities in that respect. You can understand how that would completely destroy military discipline.

Mr. REILLY. I notice the record indicates the disciplinary powers of the military officials with regard to these men.
494 I thought there might be concurrent power on the part of the company but you feel that the record doesn't lend any support to that theory?

Mr. PANTZER. I do not, except in an advisory manner with respect to hiring and firing. There is no finding that there is any advisory authority on the part of the company to promote employes, to demote employes. Those promotions and demotions came from Cincinnati or were made by the Chief of the Military Police on the spot, without any consultation whatever with the Personnel Department of the company.

Mr. HOUSTON. On grievances, do they take that up with the Personnel Department of the company?

Mr. PANTZER. They have no grievances in the army. You are lucky if you get to salute your company commander, and the record so shows. In other words, if the army is wrong it's right. There is no National Labor Relations Act unfortunately, in the Army. I was in the last war and I think there should be some sort of grievance procedure but not the Russian kind.

Mr. REILLY. Then it is your position that these men are employes of the War Department? Is that correct? Did you read in the Grable case that statement prepared jointly by the War and Navy Departments with regard to their views of the legal status of these armed guards?

Mr. PANTZER. In other words, that there may be collec-
495 tive bargaining?

Mr. REILLY. Yes; there is reference to it in the decision. I am not sure that it is set out in full. I remember it was included in an exhibit.

Mr. PANTZER. Now, Mr. Reilly, I hope that when that order is taken judicial knowledge of in this case, because it is not in the record.

Mr. REILLY. Yes; I understand that.

Mr. PANTZER. That the Board will honestly put into the record the date of that order, because the date of that order is antecedent to the orders 1, 2, 3, and 4 which are in the record in this case, and your Grable case was decided before this more thorough organization of the Auxiliary Military Police under the Ordnance Department, not the Aircraft Department, the Lease Lend Department or the Navy Department, in Cincinnati, through its Civilian Security Service headed up by a major and captains and lieutenants.

Mr. REILLY. Your feeling is that even though your earlier arrangement made by the Army and Navy may have been such as to attain the relationship of employer-employe with regard to these men so far as companies were concerned that the arrangements they made in Indianapolis were so different that we have got to

examine these documents alone and decide whether there is an employer-employe relationship?

Mr. PANTZER. Precisely.

496 I concede, your Honor, that perhaps the Grable case may be right on its facts though none of the facts on my side of the case are noticed in the Grable case, because the Grable plant was not organized as our plant was. Consequently, that ruling of the War Department related to the rather loose supervision of plant guards who were nothing more than watchmen in the Grable plant. In other words, I maintain that had the union sought to organize our six watchmen that before the government took it over we would have had the Grable case in the Atkins situation.

Mr. REILLY. Yes.

Mr. PANTZER. Now, going back to the contract you will note that the contract violates very clearly the orders which are in evidence. It provides that rights to promotion, preference to shifts and the right to remain in the service of the company in case of reduction in force shall be governed by seniority. Now, it develops that the military authorities following the Manual of Guard Duty started an entirely different shift system with respect to these guards than we have in our plant. Our plant is run on fixed shifts. The year round a man works on the graveyard shift and doesn't rotate. These, according to the military service rotated in eight hour tours of guard duty. Furthermore, you will find, as the record illustrates that the orders which they swore to carry out are identically the same, through order No. 12,

497 of the order of an infantry soldier on guard duty under the Manual of Interior Guard Duty, photostatic copies of the proper pages of which are in evidence in this record.

Now, under that it would be absolutely impossible for the employer to promote or demote or give preference as to shift according to seniority. The Chief of the Military Police, may it please the Board, testified specially that the right of promotion, the right of discipline, depended entirely upon the ability and performance of the man.

Mr. HOUSTON. He determines that himself, doesn't he; I mean the chief?

Mr. PANTZER. The chief.

Mr. HOUSTON. Yes.

Mr. PANTZER. The chief, who is frequently visited by Captain Westenall from Cincinnati and Lieutenant Scanlon from Indianapolis.

Mr. HOUSTON. Yes; I understand that, but no member of the company has any voice in the matter?

Mr. PANTZER. No member of the company. The testimony was uncontradicted that these police have the right to arrest officers of the company, to discipline officers of the company, to keep them

from walking around in their own plants. This was entirely under the jurisdiction of the military authorities. And this contract provides that the management of the plant and the direction
498 of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer and the right to relieve employes from duty because of lack of work or other legitimate reasons is vested exclusively in the company. I assume that some of those other contracts were *were* that, and they may be plants which were under the jurisdiction of the air force at the time the contracts were made, in which none of this military legerdemain if the Board chooses to look at it as legerdemain, and it certain is not legerdemain—was enforced.

Now, I have taken up my half hour. I hope I have impressed the members of the Board with my sincerity in believing that the incidents of the employer-employee relationship, as those words are used in the statute, do not exist in this case except with respect to the sole technical incident that the pay actually comes from the company but when you realize that the company is merely a conduit of that pay, made to pay it as a result of the contracts of the government, contracts which it was impossible to introduce in evidence because of the confidential nature of the product covered thereby. It will be seen that it is merely a technical incident and that in substance it is the government which is the paymaster of these troops.

Mr. REILLY. Just one more question. Are their wages fixed by some scale that appears in an Army manual or are they fixed by the company so far as any company has control of the
499 situation under the regulations under the War Labor Board?

Mr. PANTZER. Will you ask that question again, please?

Mr. REILLY. Yes; in fixing the wage rates for the guards do you have to conform to some standards in the Army or War Department Manual?

Mr. PANTZER. The record shows that in fixing their original wage rate which as I understand have not been increased since—and I interpolate now because the record doesn't show it but the wage rate of the saw smiths in the Saw Smiths Union and the C. I. O. employees in the C. I. O. Union has also not been changed for two and a half years, which well covers the period since when the Plant Guards came into the plant. They were initially fixed by a Form 10 application addressed to the National War Labor Board and we put that evidence into the record.

Mr. REILLY. Yes.

Mr. PANTZER. In other words, we have been fair in presenting all the facts.

Mr. HOUSTON. I don't know whether this is a relevant question or not but I want to ask it. Do you operate on a cost-plus basis on your contracts with the government?

Mr. PANTZER. No; we do not operate on a cost-plus basis. We have never been on that basis and the company is not in the best financial condition at this time for that reason.

It may interest you that a little later in the day I am
500 to discuss with representatives of the War Labor Board the matter of this steel base as it affects the Atkins Company.

Mr. HOUSTON. Yes.

Mr. PANTZER. The 17-cent wage increase and the guaranteed weekly wage, and so forth. But, that, of course, won't affect these plant guards because they are not in the C. I. O. Steel Workers Union.

Mr. REILLY. Mr. Thomas.

ORAL ARGUMENT OF MR. L. O. THOMAS

Mr. THOMAS. May it please the Board, I notice argument phased brought out by Respondent's attorney a repetition of arguments that are already in the record. I have not been able to distinguish anything new at all and I just want to leave this thought that even granting the assumption that the Army of the United States has made an exception in this one case and has special rules surrounding this one particular plant, that even so they have left certain matters which are the subject of collective bargaining and wages, if that were the only thing that were left it would still be a matter for collective bargaining and to that extent, at least, these individuals would be employes under the Act. The fact that the union made certain proposals as subjects for collective bargaining doesn't seem to me to be relevant at all in view of the fact that they are subject to collective bargaining and certainly if the company is precluded from arriving at
501 a certain agreement the union would have to recede from its particular position. Now, the fact that if this case is as you would be inclined to believe, from the remarks of counsel, it is the only case in the country in which this particular situation exists, which the union doubts, then we would be very much interested in that. We have many contracts with concerns covering militarized guards who have to take an oath in the army, who have to submit to F. B. I. investigation and who are completely under the supervision of the army to the same extent they believe as the guards in this case.

Mr. HOUSTON. And are still paid by the employer?

Mr. THOMAS. And are still paid by the employer. And even in the record, the documentary arguments, the point isn't raised so fine as it is here today, removing the company from the control of this force in many respects. I didn't get out of the record and the pleadings that clear a distinction. I got the fact that many things were subject to the supervision of the military forces and

I think that that is just and right. The company in the first place, however, entered into the agreement with the United States in which this was a clause. It was a voluntary proposition on the part of the company and I don't think that the military or the company, either one, can enter into a contract and deprive an individual of a right under an Act. These men are not part of the armed forces in the true sense of the word. They can be
502 called out the same as any police official to subdue local riot or something like that. So can a guard with a deputy sheriff's badge so they are not subject to call to any foreign service. They haven't obligated themselves to be called to a training ground and shoulder a rifle. They have obligated themselves to watch this plant and to follow the military rules that are set up for that purpose. And I can't believe, nor do I think the Board can believe, that the military is any more concerned about the guarding of that particular plant than it is the large aircraft plants throughout the country.

Mr. HOUSTON. Is there any distinction between these particular guards in this plant and any other militarized or aircraft factory?

Mr. THOMAS. Not to the Union's knowledge. That, of course, as a matter of fact would have to be established from the record but to the Union it seems unique that there should only be one place in the country where they cease to be employees when they are considered by the army which has already issued regulations to that effect, stating wherein it is possible for those people to bargain collectively. The only requirement that they make is that they not be a party or part of the same lodge that the production and maintenance employees are, that they have a separate union of their own, all of which has been carried out meticulously in this case as counsel's remarks would indicate. There is a
503 Guards Lodge in the City of Indianapolis. Nobody is eligible to it except those who are guards. I don't know whether it is in the record or not, but I make the statement and we are willing to substantiate it with exhibits, to the effect that we have contracts, plenty of them, covering militarized guards. Now, the rest of it probably would be the same as my colleague, Huhndorff, I agree whole-heartedly with——

The CHAIRMAN. Do you have any more?

Mr. THOMAS. I should like to say one sentence. I should like to ask of the Board that it take judicial knowledge of any public records which it has in the form of directions and decisions of election or orders in unfair labor practice cases with respect to the four or five other plants which this local Machinists Union has under organization in Indianapolis, in order to establish whether or not any contest of the existence of the employer-employee relationship was made by employers in those cases.

Mr. REILLY. Does the record indicate the names of those?

Mr. THOMAS. Yes; I mentioned three of them just a moment ago.

Mr. REILLY. Then we can check them.

Mr. THOMAS. Check them against your record and find out whether any contests were made. I understand that consent elections were held in those cases or recognition made without even an election.

504 Now, I have been unable to run the cases down in my services in Indianapolis. I have found nothing which runs counter to my statements. I therefore ask you to take judicial knowledge and if you find any facts that run counter to my observations—I am not stating them as a matter of fact because I don't know the ultimate facts—but you cite them in your opinion.

Mr. REILLY. Yes.

Mr. THOMAS. There is a standard clause that takes care of any army regulation as they affect a collective bargaining agreement. In other words, it says if there are any army regulations to the contrary they are controlling. If Mr. Pantzer would give the dates of these orders that counsel was curious about.

Mr. PANTZER. Well, let me be fair to Mr. Thomas, who is not conversant with the record, in the proposal of the union, Mr. Thomas, from which I read just a few minutes ago——

Mr. THOMAS. That is in the record.

Mr. PANTZER. In my direct statement, appears an Article Numbered VIII bearing the heading "War Department Regulations" reading as follows: "It is understood that for the duration of the war this agreement is in all respects subject to the provisions of the directives of the War Department concerning military organizations of the plant guard forces, W. D. Directive, July 2,

505 1942, A. G. 231.43, 808 circular (blank 1942, and any amendments thereto, and that nothing contained in this agreement shall be construed in any way to interfere with the organization, efficiency, training, and control by the War Department of the company guard force as an auxiliary to the Military Police nor to abrogate or interfere with the duties, responsibilities and rights imposed by the War Department upon any employe in such Auxiliary Military Police." You might as well not have a collective bargaining agreement with the proposals which I read in my direct statement as have that in the agreement. That is not collective bargaining if it means what it says. But I call attention to the dates of those orders which antidate by substantially a year the new system set up by the government with respect to the Auxiliary Military Police from Cincinnati out.

Mr. REILLY. Thank you.

Mr. THOMAS. The order to which I refer is dated May 10, 1943.

Mr. REILLY. Would you show the document to Mr. Pantzer and see if he has any objection to it (handed over to him).

Mr. PANTZER. I have never seen this document. May I have a moment's time to consider it?

Mr. REILLY. Yes indeed.

(Discussion off the record.)

Mr. PANTZER. I have glanced through the document which was handed me by Mr. Thomas and find it is a conformed copy
506 of a collective bargaining agreement entered into between the Aircraft Accessories Corporation, Kansas City Division, including Slater, Missouri, and the Auxiliary Military Police and Guards Union, a subdivision of the International Association of Machinists. I have glanced through the various provisions therein contained and I should say ninety percent of them are entirely out of consonance with the material contained in the military order from Cincinnati. Now, it was denial of my request for subpoena that prevented me from showing how out of accord with military discipline these three or four or five other contracts of this union, actually imposed upon and signed by the employers, were.

May I leave this with the Board, or do you want it for your files?

Mr. THOMAS. Well, I will finish you copies.

Mr. PANTZER. If he would send copies to the Board and to me I think it would be illustrative rather than in defeat of the point I make.

Mr. REILLY. Yes; I take it that there is no objection to our receiving it, is that right?

Mr. THOMAS. No.

Mr. PANTZER. I have no objection to the Board's receiving and making an exhibit if the document provided that Mr. Thomas will send a copy to me.

Mr. REILLY. Yes; that is understood.

507 (Discussion off the record.)

Mr. REILLY. On the question of the relevance it would seem to me that the real question in this case is whether the orders and contracts of the government applicable to this company are such that the government can determine that the control exercised over them by the company is so continuous as to indicate that the employer-employee relationship did not exist so that while the collective agreement which you offered is of interest it wouldn't necessarily have any bearing on this point since the argument seems to be confined——

Mr. PANTZER. I think you were about to suggest, Mr. Reilly, that if it is made an exhibit I get to see it.

Mr. REILLY. Oh, yes, indeed.

Mr. PANTZER. And I want to call attention to the fact that it is a contract very obviously with an aircraft producing firm and none of the aircraft producing firms in our area, including Curtiss-Wright and so forth have had the military regulations enforced. Even today, in May 1944 that is so.

Mr. REILLY. Thank you, gentlemen.

(Whereupon the oral argument was closed.)

508 [Clerk's certificate to foregoing paper omitted in printing.]

510 In the United States Circuit Court of Appeals for the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

E. C. ATKINS AND COMPANY, RESPONDENT

Petition for enforcement of an order of the National Labor Relations Board

Filed Aug. 28, 1944

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151, et seq.), respectfully petitions this Court for the enforcement of its order against respondent, E. C. Atkins and Company, Indianapolis, Indiana, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90 and and their affiliate, Local 1683, Case No. 9–R–1200," and, "In the Matter of E. C. Atkins and Company and International Association of Machinists, District 90, and their affiliate Local 1683, affiliated with the American Federation of Labor, Case No. 9–C–1982."

In support of this petition, the Board respectfully shows:

(1) Respondent is an Indiana corporation, engaged in business in the State of Indiana, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference
511 is hereby made, the Board, on May 30, 1944, issued a decision and order directed to the respondent, and its officers, agents, successors, and assigns.

The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, E. C. Atkins and Company, Indianapolis, Indiana, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District 90, and their affiliate, Local 1683, affiliated with the American Federation of Labor, as the exclusive representative of all plant guards at its two Indianapolis plants, excluding the chief, lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District 90, and their affiliate, Local 1683, affiliated with the American Federation of Labor, as the exclusive representative of all plant guards at its two Indianapolis plants, excluding the chief, lieutenants, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places throughout its two Indianapolis plants, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

512 (c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On May 30, 1944, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana, respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
(S) Malcolm F. Halliday,
MALCOLM F. HALLIDAY,
Associate General Counsel.

Dated at Washington, D. C., this 24th day of August 1944.

513 [*Duly sworn to by Malcolm F. Halliday; jurat omitted in printing.*]

515 In the United States Circuit Court of Appeals for the Seventh Circuit

Case No. 8669

[Title omitted.]

Motion of respondent, E. C. Atkins and Company, to require petitioner to conform appendix and brief to the rules of this court

Filed Sept 26, 1944

Comes now E. C. Atkins and Company, the Respondent in this cause, and in support of its motion to require Petitioner to conform Appendix and Brief to the Rules of this Court, alleges:

1. That the "Appendix to Petitioner's Brief," filed in this cause on September 6, 1944, fails to comply with Rule 35, Section 4, Clause (c), of this Court, requiring the Petitioner to "print as a part of the appendix to his brief the pleadings, together with the findings of fact, conclusions of law, order and opinion of the board," in that such Appendix fails to set forth the "Statement of Exceptions to Intermediate Report, Record, and Proceedings," executed by the Respondent on March 6, 1944, and filed in this cause on March 8, 1944, consisting of fourteen typewritten pages.

516 (a) Section 32 of the Rules and Regulations Series 3 of the National Labor Relations Board, effective November 26, 1943 (before February 19, 1944, the date of the Intermediate Report rendered by Trial Examiner Persons herein), provides as follows:

"SEC. 32. Intermediate Report; contents; service; transfer of case to Board.—After a hearing for the purpose of taking evidence

upon a complaint, the Trial Examiner shall prepare an Intermediate Report * * *."

(b) Section 33 of the Rules and Regulations Series 3 of the National Labor Relations Board, effective November 26, 1943, provides as follows:

"SEC. 33. Exceptions; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exception.—Within fifteen days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of this Article, any party or counsel for the Board may file with the Board at Washington, D. C., an original and four copies of a statement in writing setting forth such Exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. * * *"

(c) Section 35 of the Rules and Regulations Series 3 of the National Labor Relations Board, effective November 26, 1943, provides as follows:

517 "SEC. 35. Action of Board upon expiration of time to file Exceptions to Intermediate Report; oral arguments before and filing of briefs with Board; action of Board where Trial Examiner finds no unfair labor practices and no Exceptions filed; reopening of record.—Upon the expiration of the period for filing a statement of Exceptions and brief, as provided in Section 33 of this Article, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other agent or agency, or may close the case upon the compliance with the recommendations of the Intermediate Report, or may make other disposition of the case. * * *"

(d) The "Statement of Exceptions to Intermediate Report, Record, and Proceedings," executed by the Respondent on March 6, 1944, and filed in this cause on March 8, 1944, is, in the opinion of the Respondent, a pleading absolutely essential to the record of this case in this Court.

2. That the "Brief for the National Labor Relations Board" filed in this cause on September 18, 1944, fails to comply with Rule 35, Section 5, and Rule 16, Section 4, of this Court, requiring the statement of facts to show the pages of the transcript of the record, in which the "War Department Regulations providing for the Activation of Auxiliary Military Police Units," set forth as an "Addendum" at pages 20 to 44, both inclusive, of such Brief (hereinafter referred to as the "War Department Regulations"), appear.

(a) The War Department Regulations were never offered or admitted in evidence in this case and do not constitute a part
518 of the "Transcript of the Record filed in this Court," referred to in Rules 34 and 35.

(b) The War Department Regulations are the principal basis of the arguments set forth in points A. and B. of the Petitioner's Brief (see all references marked "infra" on pages 8 to 12, both inclusive, of such Brief).

(c) At the hearing held September 24, 1943, the only military orders offered in evidence to show the relationship between the plant guards and the War Department were Guard Order No. 1, dated May 10, 1943 (Respondent's Exhibit No. 10); Guard Order No. 2, dated May 11, 1943 (Respondent's Exhibit No. 11); and Guard Order No. 3, dated May 12, 1943 (Respondent's Exhibit No. 12), all issued by the Continuous Security District Office of the War Department, at Cincinnati, Ohio, and issued over the signature of B. R. Witenhall, Captain C. M. P. District Plant Guard Officer, and letter under date of June 7, 1943 (Respondent's Exhibit No. 4), issued over the signature of A. C. Rasmussen, Lt. Col., Ord. Dept. District Chief. All the issues herein, both in the representation proceedings and the unfair labor practice proceeding, were tried upon the assumption that the said Respondent's Exhibits Nos. 10, 11, 12, and 4, were the sole written exhibits setting forth the military orders showing the relationship between the plant guards and the War Department.

519 (d) No request was either made or granted in the representation case or at the hearing in the unfair labor practice case to take judicial notice of the terms and conditions of the War Department Regulations.

(e) The War Department Regulations are not such a document as this Court may take judicial notice of at the argument, or in rendering its decision herein.

(f) If the War Department Regulations are permitted to be the basis of Petitioner's case herein, they substantially change the theory of such case and the evidence upon which it is based. It is, therefore, imperative for the Respondent to know in advance of writing Respondent's brief whether or not the War Department Regulations are properly before this Court.

Wherefore, the Respondent prays this Court that it order the Petitioner to do the following:

1. Supplement the "Appendix to Petitioner's Brief" by setting forth therein the "Statement of Exceptions to Intermediate Report, Record, and Proceedings," executed by the Respondent on March 6, 1944, and filed in this cause on March 8, 1944.

2. Strike out from the "Brief for the National Labor Relations Board" the War Department Regulations set forth as
520 an Addendum at pages 20–44 thereof, and all references to such addendum contained in such Brief.

BARNES, HICKAM, PANTZER & BOYD,
By KURT F. PANTZER,
Attorneys for Respondent.

522 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8669

[Title omitted.]

Memorandum of National Labor Relations Board in opposition to Respondent's motion to require the Board to supplement its Appendix and to strike certain portions of its brief

Filed Oct. 2, 1944

I

With respect to respondent's motion that the Board be required to supplement the appendix to its brief by setting forth respondent's "Statement of Exceptions to Intermediate Report, Record, and Proceedings" dated March 6, 1944, the Board desires to inform the Court that the Board, by letter dated September 28, 1944, authorized the printer to prepare a supplemental appendix containing this document, which the Board inadvertently failed to designate for printing in the Designation heretofore filed herein.

II

Respondent's motion that the Board be required to strike from its brief the War Department Regulations providing for the Activation of Auxiliary Military Police Units, dated March 17, 1943, which the Board included as an addendum to its brief, should be denied for the following reasons. The Regulations in ques-
523 tion were promulgated by the War Department pursuant to the authorization contained in Executive Order No. 8972 dated December 12, 1941, issued by the President in the exercise of his constitutional authority as Commander in Chief of the Army and Navy of the United States for the purpose of affording protection of national defense material, premises, and utilities from injury or destruction. It is well settled that such regulations, like regulations of executive officers of the Government issued in the exercise of their statutory functions, have the force and effect of law. United States v. Grimaud, 220 U. S. 506, 520–523; United States v. Morehead, 243 U. S. 607, 613–616; Maryland Casualty Co. v. United States, 251 U. S. 342, 349; Lilly v. Grand Trunk R. Co., 317 U. S. 481, 488. Having such effect, the regulations in question, even though not formally introduced into evidence, may be judicially noticed by this Court just as decisions of the courts and administrative agencies and acts of Congress are judicially noticed and considered. Caha v. United States, 152 U. S. 211, 221–222; Lilly v. Grand Trunk R. Co., 317 U. S. 481, 488; Givens v. Zerbst, 255 U. S. 11, 18.

Having the force and effect of law, the Board may rely on these Regulations in its argument to this Court and the Court may take notice thereof and consider them, irrespective of the fact that respondent was not specifically put upon notice at the hearings before the Board as to the scope of the Board's argument to be presented in this Court. Respondent is presumed to be familiar with the basic authority underlying Lt. Col. Rasmussen's action in issuing the letter of June 7, 1943, which assertedly governed the militarization of respondent's plant guard forces. As the Supreme Court has held, "those dealing with an agent of the United States must be held to have had notice of the limitations of his authority." Wilber National Bank v. United States, 294 U. S. 120, 123–124; Sutton v. United States, 256 U. S. 575, 579; Whiteside v. United States, 93 U. S. 247, 256–257.

524 Moreover, Lt. Col. Rasmussen's letter of June 7, 1943, which respondent introduced into evidence, referred to the action of the Secretary of War in directing the military organization of plant guard forces as Auxiliary Military Police (B. A. 58–58i, par. 1). Thus respondent was put upon notice of the existence of the underlying authority for Lt. Col. Rasmussen's action in issuing the letter of June 7, 1943, concerning the militarization of civilian guard forces. In these circumstances, particularly, respondent may not validly claim that it was taken by surprise by the Board's reliance in this Court upon the basic War Department Regulations governing the militarization of civilian guard forces.

Wherefore, the National Labor Relations Board, petitioner herein, prays that respondent's motion to require the Board to strike said War Department Regulations from its brief herein be denied forthwith, or, in the alternative, that the Court reserve its decision on said motion pending its consideration of this cause on the merits.

Respectfully submitted.

(S) Malcolm F. Halliday,
MALCOLM F. HALLIDAY,
Associate General Counsel,
National Labor Relations Board.

Dated September 30, 1944.

526 In the United States Circuit Court of Appeals for the Seventh Circuit

Case No. 8669

(Title omitted.)

Reply of Respondent, E. C. Atkins and Company, to answer memorandum of Petitioner respecting motion of Respondent to require Petitioner to strike addendum, and all references to addendum, from Petitioner's brief

Filed Oct. 5, 1944

Comes now E. C. Atkins and Company, the Respondent in this cause, and for reply to the Answer Memorandum of the Petitioner respecting the Motion of the Respondent to require the Petitioner to strike the Addendum, and all references to the Addendum, from the Petitioner's Brief, alleges:

1. The "Addendum," which, together with references thereto, the Respondent has moved to be stricken from Petitioner's Brief, is Circular No. 15, dated March 17, 1943, issued by the Headquarters, Army Service Forces, Washington, D. C., relating to "Auxiliary Military Police." In Respondent's Motion, and in this Reply, such Circular is referred to as the "War Department Regulations."

527 The Petitioner's Memorandum advises that the War Department Regulations "were promulgated by the War Department pursuant to the authorization contained in Executive Order No. 8972 dated December 12, 1941, issued by the President in the exercise of his constitutional authority as Commander in Chief of the Army and Navy of the United States for the purpose of affording protection of national defense material, premises, and utilities from injury or destruction."

The Respondent denies that the War Department Regulations were promulgated by the War Department, as is perfectly obvious upon perusal thereof. In this sense, both the use of the words "War Department" by the Petitioner and the citation of the cases of the Petitioner are a trifle loose and inaccurate. The Respondent admits that Executive Order No. 8972, dated December 12, 1941, was issued by the President. Executive Order No. 8972, dated December 12, 1941, of which this Court is required to take judicial notice pursuant to the provisions of Sections 304, 305 and 307 of the Federal Register Act (U. S. C. A. 44, § 301 ff. July 26, 1935) reads as follows: "Executive Order 8972, authorizing the Secretary of War and the Secretary of the Navy to establish and maintain military guard and patrols, and to take other appropriate measures, to protect certain national-defense material, premises, and utilities from injury or destruction.

"Whereas the United States is now at war; and

"Whereas there exists a serious and immediate potential danger of sabotage to national-defense material, national-defense
528 premises, and national-defense utilities which may menace our maximum productive effort; and

"Whereas the Congress of the United States has in recent enactments recognized this danger by enjoying efforts to injure, interfere with, or obstruct the national defense, and providing severe penalties therefor; and

"Whereas it is considered necessary in the interests of national defense that, in particular situations where hazardous, dangerous,

or other unfavorable conditions may from time to time exist, special precautionary measures be taken by establishing and maintaining military guards and patrols or other appropriate means to protect from injury or destruction national-defense material, national-defense premises, and national-defense utilities:

"Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander-in-Chief of the Army and Navy of the United States, I hereby authorize and direct the *Secretary of War, whenever he deems such action to be necessary or desirable*, and the Secretary of the Navy, whenever he deems such action to be necessary or desirable, to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury or destruction national-defense material, national-defense premises, and national-defense utilities, as defined in the act of April 20, 1918, 40 Stat. 533, as amended by the act of November 30, 1940, 54 Stat. 1220, and the act of August 21, 1941, 55 Stat. 655.

"This order shall not be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, Department of Justice, with respect to the investigation of alleged acts of sabotage.

"FRANKLIN D ROOSEVELT.

THE WHITE HOUSE,
December 12, 1941." [Emphasis Ours.]

One of the principal purposes of the Federal Register Act was to make available, for the purpose of constructive notice and judicial notice, the fast multiplying Executive Orders, 329 Directives, Regulations, etc., which the Federal Government is promulgating. It would seem to be safe and fair to the average citizen to assume that he need not take constructive notice of any other documents. Certainly, that clause of Section 307 of the Federal Register Act, which provides that "unless otherwise specifically provided by statute, such filing of any document, required or authorized to be published under § 305 of this chapter, shall, except in cases where notice by publication is insufficient in law be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby," does not affirmatively apply to the War Department Regulations upon which the Petitioner at this late date now desires to base its case.

The six cases cited by the Petitioner in its Brief are all cases in which a statute expressly directed the heard of an Executive Department, or Administrative Department, such as the Secretary of War, personally, or the Interstate Commerce Commission, to promulgate rules and regulations in the first instance, or to approve them as promulgated after they have been prepared by a subordinate officer or bureau. In not one of the cases is a regulation, not promulgated under the hand of the head of the Executive De-

partment, or by order of the Administrative Tribunal concerned, given statutory effect or judicially noticed.

It is to be kept in mind that in the instant case, the Petitioner is seeking an Enforcement Order or Injunction
530 against the Respondent upon the theory that the Respondent was guilty of an Unfair Labor Practice by virtue of having refused to obey the War Department Regulations, referred to. These War Department Regulations were neither introduced in evidence nor referred to at any one of the following occasions in which this matter has been in controversy:

1. The hearing on the representation petition.
2. The Decision and Order on the representation petition.
3. The hearing in the Unfair Labor Practice Case.
4. The Intermediate Report in the Unfair Labor Practice Case.
5. The argument in Washington before the National Labor Relations Board in the Unfair Labor Practice Case.
6. The final Decision and Order in the Unfair Labor Practice Case.

Neither is Executive Order No. 8972, dated December 12, 1941, and issued by the President, or the War Department Regulations, referred to in any way, shape, or form in the "Petition for Enforcement of an Order of the National Labor Relations Board," executed August 24, 1944, which is now pending before this Court (Appendix to Petitioner's Brief, pp. 1 to 4).

Although the decision in Nagle v. United States, 145 Fed. 302 (C. C. A. 2 (1906) has probably been overruled if the rules
531 and regulations therein referred to were issued over the signature of the Postmaster General (the head of a Federal Executive Department), common sense of the decision is doubtless still good, and is consequently here quoted for the purpose:

"Reference is made to the regulations of the post office, and some sections thereof are printed in the brief, but none of them are set forth in the record. The decisions of the Supreme Court on the subject of judicial notice of such rules and regulations are not entirely uniform. Caha v. U. S., 152 U. S. 221, 14 Sup. Ct. 513, 38 L. Ed. 415; The E. A. Packer, 140 U. S. 367, 11 Sup. Ct. 794, 35 L. Ed. 453. Where there is some question of statute law, where the court can itself by reference to books with which it is familiar, and which each judge posseses, determine just what statutory provisions were in force at a given date, there is no necessity for incumbering the record with them. But it is different

with departmental regulations. No department ever sends its compilation of regulations to the judges. They are frequently amended, and, without special information from the department, no one can tell whether a particular regulation in some printed compilation was in force a year later. It is grossly unfair to a trial judge to cite some regulation upon a brief on appeal which was not laid before him on the trial. We have no doubt that it is far better practice to read any special regulations which may be relied upon into the record before the trial court. It is a hopeless task for an appellate court to determine what such regulations were at any particular time. It must either accept counsel's statement, or itself make inquiry of the particular department; neither of which practices is to be commended. It is to be hoped that upon the new trial the various regulations bearing upon the questions presented by the case may be specifically referred to."

The Respondent again shows that in order properly to analyze the Petitioner's case on this appeal, and further to prepar
532 Respondent's Brief, the decision of this Court should be made prior to the preparation and filing of such Brief, and not be kept pending the consideration of this cause by this Court on its merit.

Wherefore, E. C. Atkins and Company, the Respondent herein, prays that the Respondent's Motion to Require the Board to strike said War Department Regulations, and any and all references thereto, from its Brief be granted.

BARNES, HICKAM, PANTZER & BOYD,
By KURT F. PANTZER,
Attorneys for Respondent.

Dated at Indianapolis, Indiana, October 4, 1944.

533 In United States Circuit Court of Appeals

[Title omitted.]

Order overruling motion.

October 9, 1944

It is ordered that the motion of respondent to require petitioner to conform appendix and brief to the rules of this Court be, and it is hereby, overruled, without prejudice to the right to present it at the hearing on the merits.

534 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8669—January Term, 1945, October Session, 1944

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

E. C. ATKINS AND COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

Before SPARKS, MAJOR, and KERNER, Circuit Judges.

Opinion

Filed February 27, 1945

MAJOR Circuit Judge. This case is here on petition of the National Labor Relations Board for enforcement of its order issued May 30, 1944 against respondent, pursuant to Sec. 10 (c) of the National Labor Relations Act. The Board, upon a charge filed by the International Association of Machinists, District 90, and its affiliate Local 1683 (hereinafter called the Union), issued its complaint charging that respondent had violated Sec. 8 (5) and (1) of the Act. In its answer to the Board's complaint, respondent admitted that it had refused to bargain collectively with the Union, as alleged in the complaint, but urged that members of the unit for whom the Union sought to bargain were not employes of respondent within the meaning of the Act, and that consequently its refusal to bargain did not constitute a violation. The Board decided adversely to respondent and entered its cease and desist order now sought to be enforced.

535 No evidence was offered by either of the parties at the hearing on the unfair labor practice charge; however, it was stipulated that the evidence which had theretofore been offered in a representation proceeding should be considered. In this latter proceeding, instituted by the Union on October 19, 1943, it was determined by the Board that the militarized plant guards at respondent's plants were employes within the meaning of the Act and that; excluding certain supervisory employes, they constituted an appropriate bargaining unit within the meaning of Sec. 9 of the Act. The Board accordingly directed that an election be held among the employes in said unit. Following the election, the Board on November 29, 1943, certified the Union as the exclusive bargaining representative for such employes.

The primary issue now presented, stripped of all camouflage, is whether the members of the unit for whom the Union sought to bargain were employes of respondent within the meaning of Sec. 2

(2) and (3) of the Act. It is also contended by respondent that even though the position of the Board be sustained in this respect, its order should not be enforced, on the ground that its enforcement would not effectuate the policies of the Act.

Respondent urgently insists that the findings of the Board are insufficient to support its order, and particularly that at no time has the Board made a specific finding on the issue as to whether the members of the bargaining unit are its employes within the meaning of the Act. While there is some merit in this criticism, it cannot be doubted but that the Board determined such issue adversely to respondent and that respondent was aware of such determination. Respondent also contends that the Board was without authority in the unfair labor practice case to make findings in addition to those made in the representation case. It is true, as already stated, that no additional evidence was offered in the latter case but, nevertheless, we are of the view that the Board, with the record of both proceedings before it, had a right to make such further findings as it deemed appropriate.

We are of the view, also, that the findings contained in its decision in the unfair labor practice case, if substantially supported, are sufficient to support its order. In studying this record for the purpose of ascertaining if such support is present, we are not unmindful of the admonition so often repeated that a court is
536 not permitted to weigh the evidence and substitute its judgment for that of the Board. As stated in the recent case of National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111, 130:

"Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the record."

The Hearst case is strongly relied upon by the Board. It is true that the issue there decided, that is, whether the members of the unit which sought the right to bargain were employes within the meaning of the Act, was the same as the issue in the instant case. The facts of that case, however, are so widely different from those of the instant case that it is of little, if any, assistance here. It is pertinent to note that the court was particular to point out in detail the vast amount of control which the publisher had over the newsboys in question. The court also recognized that many forms of service relationship are not within the meaning of the Act. It stated (page 126):

"Large numbers will fall clearly on one side or on the other, by whatever test may be applied. But intermediate there will be many, the incidents of whose employment partake in part of the one group, in part of the other, in varying proportions of weight. And consequently the legal pendulum, for purposes of applying the statute, may swing one way or the other, depending upon the

weight of this balance and its relation to the special purpose at hand."

Therefore, we are of the view that the decision in the Hearst case requires rather than precludes a review of the facts in the instant case, with a view of ascertaining if they reasonably support the Board's order. Furthermore, we are of the view that common-law tests are not to be ignored, although not exclusively controlling, and that any test utilized must be consistent with the purposes of the Act.

Respondent is a corporation operating two plants in Indianapolis, Indiana. One of such plants (referred to as the Main Plant) has been owned and operated by respondent since 1857; the other (referred to as Fall Creek Ordnance Plant) is owned by the federal government and was constructed for war purposes. Respondent operates the latter under a lease from the federal government, the terms and conditions of which are confidential
537 for military reasons. The latter is a military reservation, and the Main Plant is listed by the government as a restricted area under government supervision.

Since 1941, respondent has been engaged exclusively in the manufacture of armor plate for the federal government. Prior thereto, it was engaged in the production of saws and saw tools at the Main Plant. At that time respondent had as its employes some fifty-nine sawsmiths who for a period of over forty years had been organized by and were members of the Sawsmiths Federal Labor Union No. 18548 (sometimes referred to as the Federal Local), and 1,208 production and maintenance employes who had since 1937 been members of the United Steel Workers of America, Local 1543, affiliated with the C. I. O. (sometimes referred to as the C. I. O. Local). Respondent also had four employes, designated as watchmen, who were not members of any Union. Two of these employes worked on the night shift and two on the day shift. The duties of the former were to check the eighty-two night clocks in the plant, and those of the latter to watch or guard the gates of the plant. These four jobs were known as "pensioners' jobs."

The authority for the establishment of a plant guard system flows from Executive Order 8972, issued by the President of the United States on December 12, 1941. The order is entitled: "Authorizing The Secretary Of War And The Secretary Of The Navy To Establish And Maintain Military Guard And Patrols, And To Take Other Appropriate Measures, To Protect Certain National-Defense Material, Premises, And Utilities From Injury Or Destruction." The resolution, after reciting the situation pertaining to the crisis confronting the government as a result of war, states:

"Therefore, by virtue of the authority vested in me as President of the United States, and Commander-in-Chief of the Army and Navy of the United States, I hereby authorize and direct the

Secretary of War, whenever he deems such action to be necessary or desirable, * * * to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury or destruction national-defense material, national-defense premises, and national-defense utilities * * *."

It is to be noted that the purpose for which a plant guard
538 system was to be inaugurated is clearly stated in this executive proclamation.

In conformity with such order, there was issued by the War Department under date of July 2, 1942, a proclamation entitled "Military Organization of Plant Guard Forces," which provided in part:

"Guard forces at all War Department plants * * * are to be organized, drilled and instructed as military units subject to the Articles of War.

"These guard forces will be organized as a civilian auxiliary to the Military Police in all ammunition plants and plants where the possibility of sabotage is greatest * * *.

"At the time any guard force is organized as a civilian auxiliary to the Military Police, the commanding officer having jurisdiction over the guard force will:

"a. Cause the Articles of War prescribed by Article 110 thereof to be read and explained to each member of the guard force;

"b. Issue orders and regulations setting forth the duties and responsibilities of the guard force;

"c. Organize each guard force with a member of the Army of the United States in command and cause each force to be drilled and instructed with a view to supplementing the Army in resisting attack on war material, war premises, and war utilities which the force is assigned to guard.

"d. Require each member of the guard force to give a pledge of loyalty to the United States, and to execute an agreement acknowledging that such Articles of War are understood by him and that he is subject to military law as long as he remains a member of the guard force. (A draft of a form of such agreement is attached.)"

The form of agreement is entitled, "Agreement between the United States of America and ----------." The pro-
(Plant Guard)
posed agreement states that the government is approving the employment of guards "for the purpose of guarding and protecting war material, war premises and war utilities from injury or destruction by the enemy or otherwise, including the making of
539 arrests, as peace officers for violations of Federal laws, as well as for violations of orders and regulations issued by military authority." The proposed agreement then provides:

"Now, therefore, I, ----------, who have been or am about to be employed by ---------- as a guard at ---------- for the purpose of guarding cer-

tain war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that:

"(1) I will support and defend the Constitution of the United States against all enemies, foreign and domestic;

"(2) I will bear true faith and allegiance to the Constitution of the United States;

"(3) I will well and faithfully discharge my duty as a civilian auxiliary to the military police to protect war material, war premises, and war utilities against all enemies, foreign and domestic, and will obey any orders issued in connection therewith by the President, as Commander-in-Chief of the Army and Navy of the United States, and by his duly authorized officers;

"(4) I acknowledge that the appropriate Articles of War have been read and explained to me, and that in the performance of my duty to protect such war material, war premises, and war utilities, I am subject to military law during the period of my employment.

_____"

(Signature of Plant Guard)

At the time respondent entered into its relationship with the federal government for the manufacture of armor plate (the record does not disclose the exact date but it was sometime in 1941), representatives from the Cincinnati Ordnance Office of the United States Army made a survey of respondent's plant facilities and prescribed the requirements of the government relative to protection. As soon as contracts for the production of war goods were entered into between the Army and respondent, a clause was inserted, stating, "Unless proper protection of government property is provided, in compliance with certain directives, the contract will be cancelled." It was in compliance with this requirement that respondent entered into a relation with those whom the Board has found to be its employees. A staff of
540 sixty-four plant guards was installed, of which thirty-two were stationed at the Main Plant and thirty-two at the Fall Creek Ordnance Plant. As heretofore stated, respondent had theretofore employed only four watchmen, and with the exception of these four, none of the sixty-four persons installed as plant guards had previously been engaged in the service of respondent.

In Cincinnati, the War Department maintained a Continuous Security District Office, headed by A. C. Rasmussen, Lieutenant Colonel, Ordnance Department, as District Chief, and B. R. Wetenhall, Captain, Corps of Military Police, District Plant Guard Officer. There was no local resident Commanding Officer for the two plants of respondent, but such plants were included in a "group of plants" for which Lieutenant Scanlon of the Corps of Military Police was the Plant Guard Officer. Headquarters were maintained by him in Indianapolis for the training and discipline

of plant guards of respondent, as well as those of other plants in a certain jurisdiction. At the Main Plant, the guards were in charge of Chief Johnston, and at the Ordnance Plant in charge of Chief Hann. Under each of these Chiefs were four guards designated as Lieutenants. Of these two Chiefs and eight Lieutenants, none were Army men.

In addition to Executive Order 8972 and the War Department's proclamation of July 2, 1942, heretofore quoted, there were issued by the War Department or some representative thereof a number of documents relative to the duties, obligations and rights of the members of the plant guard force. These documents in some respects also attempted to fix the obligations and rights of respondent. Included in such documents is a War Department directive of March 17, 1943, referred to as Circular No. 15,[1] and "Plant Protection Data Binder" dated June 7, 1943, issued by the Continuous Security District Office of the War Department at Cincinnati. Other material documents include guard orders Nos. 1, 2 and 3, issued by the Cincinnati Office on May 10, 11 and 12, 1943, respectively.

Four witnesses were heard by the Board, namely, Gann Richardson presented by the Union in the representa-
541 tion proceeding, and Johnston and Wood who testified in behalf of respondent. Johnston was Chief of the plant guard force, and Wood was respondent's personnel manager. In fact, the entire proof as to the relation which actually existed between the plant guard employes and respondent was furnished by these witnesses.

We shall now examine the Board's findings, upon which its order is predicated. It first quotes the first paragraph of the agreement (heretofore quoted in full), in which the guard recites: "* * * I, ----------, who have been or am about to be employed by ---------- as a guard at ---------- * * *." There is nothing, however, in the Board's decision or findings as to what, if any, importance it attaches to the statement just quoted. Moreover, it would appear that this self-assertion would not constitute proof against respondent when contained in an agreement to which it was not a party. It is also pertinent to note that this form of agreement was furnished by the government and that an applicant could not obtain a guard position until it was signed. The "Plant Protection Data Binder," issued June 7, 1943 by the Cincinnati Office, provided: "If a guard refuses to sign the agreement he may (but need not) be temporarily retained with the understanding that he will be dismissed as soon as he is replaced, and in any event within a reasonable time." It is significant, and this the Board omitted to mention in its decision, that the plant guard in this

[1] Circular No. 15 has been printed by the Board as a supplement to its brief. It was not introduced in evidence, and respondent contends that it cannot be considered as proof in support of the Board's order. It is a public document of which, so we think, a court may take judicial notice. Standard Oil Co. v. Johnson, 316 U. S. 481, 483.

agreement pledged his allegiance to the government and stated: "I will well and faithfully discharge my duty as a civilian auxiliary to the military police to protect war material, war premises, and war utilities * * * and will obey any orders issued in connection therewith by the President, as Commander-in-Chief * * * and by his duly authorized officers." It is further significant that in this agreement no mention is made of any allegiance owed to respondent, or any obligation to take orders therefrom.

The material findings upon which the Board's order must rest are:

"The record shows that the guards are interviewed for employment by the respondent and not by the United States of America, and are hired by the respondent; that their discharge is ordinarily initiated by the respondent; and that during their employment they are paid by the respondent, at rates set by
542 the respondent and not by the United States of America.

According to Chief Guard Henry A. Johnston, a witness called by the respondent in the hearing in the representation case, he is in command of all the guards at one of the plants and works 'very closely' and 'cooperates' with the respondent's representatives. Moreover, Johnston admitted that the respondent could temporarily suspend a guard from duty. Cyrus E. Wood, the respondent's personnel director, who corroborated Johnston's testimony as related above, referred to the guards at the plants involved as the respondent's employees, and further testified that the respondent makes the 'necessary pay roll deductions' before paying them their wages.

"* * * It is true that for reasons of national security the respondent may have surrendered to the military authorities many of the attributes of control which it would normally possess over its plant guards. It is clear, however, that the respondent still retains a sufficient residual measure of control over the terms and conditions of employment of the guards so that the guards should not be deprived of the rights guaranteed in the Act."

It is important in this connection to note the test which the Board utilized as a basis for its finding of the existence of the employer-employe relationship. The test includes four incidents: (1) the guards were paid by respondent; (2) they were hired by respondent; (3) they could be discharged by respondent; and (4) the control exercised by respondent.

The incident most strongly emphasized is that they were paid by respondent. Undoubtedly, this is the most important incident common to the employer-employe relationship. In the instant case, however, it is, when viewed in connection with the attending circumstances, largely minimized if not entirely obliterated. Payment of these guards by respondent, in fact their employment, was a requirement imposed by the government as a prerequisite to respondent's right to engage in the manufacture of war ma-

terial. It had no option to pay or not pay; neither did it have any option to employ or not employ. Chief Johnston, when asked why the guards were paid by respondent when their orders were received from the military authorities, stated an incontro-
543 vertible fact: "They pay because the government makes them pay." It must be assumed, so we think, that respondent was reimbursed by the government for all costs incurred in the manufacture of war material, including that of compensation paid to the guards. In reality, under such circumstances, as bearing upon the employer-employe relationship, we are of the view that it makes no difference whether they were paid by respondent or by the government.

It is also well to keep in mind that this guard force was born of the exigencies of war. None of them (with the exception of the four original watchmen) had theretofore been employed at respondent's plant. They were employed at the command of the government and the purpose of their employment was, as stated in the President's proclamation, "to protect from injury or destruction national-defense material, national-defense premises, and national-defense utilities," or, as stated in the agreement which the plant guard was required to sign with the government, "to protect war material, war premises, and war utilities against all enemies, foreign and domestic." In "Plant Protection Data Binder" dated June 7, 1943, the mission of a guard force is stated to be twofold: (a) "to provide interior and exterior protection of the plant against sabotage and espionage and natural hazards," and (b) "to serve with the Army in providing the protection to the plant and its environs in emergency situations." Again, it is stated in this Binder, "The auxiliary military police are supplementing the Army of the United States in a vital task of protecting war material and war production facilities." It appears certain not only that they were employed at the command of the government but that the services rendered by them were for the benefit of the government and the war effort. Any benefit accruing to respondent from their services was purely incidental to the primary purpose of their employment. Reliance upon payment under such circumstances is to embrace form and to ignore the realities of the situation.

The Board's finding that the guards "are hired by the respondent; that their discharge is ordinarily initiated by the respondent" is deceptive and, we think, without substantial support. It is true, as the Board found, that the guards "are interviewed for employment by the respondent." This is done by respond-
544 ent's personnel officer when the applicant is required to fill out an application blank. This service on the part of respondent is also required by the government. At the time the application for employment is made, the applicant is expressly told: "It will not be effective without the approval of the United States government." True, after the application form had been exe-

cuted, it was the custom temporarily to assign the applicant to plant control work. In the meantime, he was required by the government to sign the agreement with it, as heretofore related. This agreement stated: "The United States is approving the employment * * *." Also, as heretofore suggested, if he refused to sign this agreement, he never became a member of the military police and his dismissal was required within a reasonable time.

The application and agreement were then transmitted to the military authorities at Cincinnati and such authorities made an investigation as to the capacity, integrity and patriotism of the applicant. Such authorities had the entire responsibility of determining the applicant's fitness, even to the extent of his physical fitness. If he was accepted by the military authorities, the signed agreement with the government was returned to the applicant, together with a Plant Guard Identification Card executed by Captain Wetenhall, District Plant Guard Officer.

This card certifies: "_____ has been voluntarily and duly enrolled as an Auxiliary to the Military Police for service with the Army of the United States at _____ and is subject to Military Law for the duration of the War or until the earlier official termination by the War Department of his services as an Auxiliary to the Military Police." It is pertinent to note that this identification card which constitutes the guard's authority states in no uncertain terms that he has been enrolled "for service with the Army of the United States at _____," and, further, that he is subject "to Military Law for the duration of the War or until the earlier official termination by the War Department." Certainly this badge of authority contains not the slightest indication that the guard has been employed, hired or can be discharged by respondent.

The applicant is also furnished with the "Certificate of Enrolment," also signed by Captain Wetenhall. The phrase-
545 ology of this certificate is the same as that of the identification card. There appears in the record one of these certificates in its executed form.[1]

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[1]

United States of America
AUXILIARY MILITARY POLICE
Army of the United States
CERTIFICATE OF ENROLLMENT

This is to certify that Henry Adams Johnston has been voluntarily and duly enrolled as an Auxiliary to the Military Police with the rank of _____ for service with the Army of the United States at E. C. Atkins & Company, Indianapolis, Indiana, and is subject to Military Law for the duration of the War or until the earlier official termination by the War Department of his services as an Auxiliary to the Military Police.

For the Commanding General, Fifth Service Command:

Dated 29 June 1943.

A. C. RASMUSSEN,

Official:
B. R. WETENHALL,
Plant Guard Officer.

Upon receiving the documents just referred to, the applicant is inducted by taking the oath of allegiance to the United States and the military. This oath includes an obligation to be subject to the Articles of War. Any doubt as to when employment as a member of the military police commences is dispelled by a provision in guard order No. 3, which states: "Service will begin with the date that the plant guard was inducted * * *."

Plant Protection Data Binder dated June 7, 1943, provides:

"Each plant guard who becomes a member of the Auxiliary Military Police continues as such until he is released by the War Department from his obligations. This will take place when competent military authority has approved of his dismissal or resignation or when he has been discharged without honor."

Again, it is provided in this same Binder:

"Basically the militarization of the plant guard forces does not change the existing systems of hiring, compensation, and dismissal except as stated in paragraph 25."

Paragraph 25 provides:

"A member of the Auxiliary Military Police may not be employed, dismissed, or may not resign if the plant guard officer or other responsible Army representative believes that the ef-
546 ficiency of the plant guard force would be impaired and declines to give his approval thereto. Inasmuch as the guards are under oath to the Army, the plant management may suspend a guard without pay pending approval of his dismissal by the District Plant Guard Officer and pending the termination of the guard's enrollment as a member of the Auxiliary Military Police."

From what we have shown, we think it is conclusively established that the authority to hire and discharge was solely the prerogative of the military. True, respondent was charged by the government with receiving the application for employment and in making a recommendation. This is the sole support, if it can be characterized as such, found in this record for the Board's finding that respondent was authorized to hire. Nor do we find any support for the Board's finding that "their discharge is ordinarily initiated by the respondent." The most which can be inferred is that respondent was permitted to recommend for discharge the same as it was required to recommend for hiring.

In making this analysis of respondent's right to hire and discharge, we must note the testimony of the witness Gann, which the Board stresses. It follows:

"Q. Who hires the guard?

"A. The personnel manager and the Chief.

"Q. Who has the authority to discharge you?

"A. The personnel manager or the Chief, I would think, of E. C. Atkins and Co."

These answers by the witness merely represented his opinion and, in addition, the "Chief" referred to was Chief Johnston who,

as will be shown, was entirely under the control of the military. Putting aside, however, such considerations, a reading of Hann's entire testimony shows conclusively that he was employed in the same manner as all other guards. This is illustrated by the following questions and answers:

"Q. From the 21st of January to the 27th of January you were an employee of E. C. Atkins and Company?

"A. Yes, sir.

"Q. They pay you whether you are their employee or whether you are a military policeman, but from January 27 you be-
547 came a military policeman and were no longer an employee of E. C. Atkins and Company, as you had been up to January 27? Your status changed, did it not?

"A. That's right. I wasn't a member of the Auxiliary Military Police until I was inducted January 27."

The most favorable possible inference which can be drawn from the record is that respondent's authority, if it had any, with reference to hire and discharge was narrowly limited; in fact, as we have stated, we think it had no right in such matters except that of making recommendations to the military authorities.

This brings us to the matter of control. The Board's finding in this respect may be properly characterized as wholly impotent. It admitted that "respondent may have surrendered to the military authorities many of the attributes of control which it would normally possess over its plant guards." It found, however, that it retained "a sufficient residual measure of control." What was intended by this language is not explained. The findings are silent as to any act or conduct on the part of respondent which evidences any control. The oral testimony shows without any contradiction that all members of the plant guard at the Main Plant took their orders and instructions from Chief Johnston. (We assume that the members of the force at the Ordnance Plant likewise took their instructions from Chief Hann; at any rate, no question is raised but that the same situation existed at each plant.) The record shows with the same degree of certainty that Johnston took his instruction in toto from the military authorities. The only reference made by the Board in this respect was that Johnston "works very closely and cooperates with respondent's representatives." We should think that the exercise of ordinary common sense would require cooperation between the military and the management, but that fact certainly can form no basis for an inference that respondent exercised control. Especially is this so when the direct uncontradicted evidence is that all control was exercised by the Army. In this connection, it seems appropriate

to relate certain proportions of Johnston's testimony, and we do so in a footnote.[1]

548 The witness Gann, who testified that he was acquainted with all the duties of a guard, did not mention a single instance in which any duty was performed under the direction of respondent. On the other hand, he conceded that all duties were performed under orders received from the military. True, at one place in his testimony he was asked, "What, in general, do guards do?" and answered, "In general they guard the plant, supposed to obey all the general orders and specific orders which the company asks us to obey." Later he testified, in complete harmony with the other witnesses, that by general orders he meant those issued by the government pertaining to the service generally, and by special orders he meant those issued by the government which applied especially to respondent's plant. Then he was asked, "And when you said 'company orders' you did not mean the E. C. Atkins Company, but the military company to

549 which you belong? They are the lieutenants, the assistant chief, the chief, and then Lt. Scanlon and Capt. Wetenhall?" And he answered, "Well, that's true."

That the military had control even to the minutest detail is shown by the testimony of Gann that special orders were received from the military as to the particular gate through which certain trucks should enter the plant. Also illustrative of this absolute control is the testimony of Johnston. In response to a question as to what he would do if he found Mr. Wood tampering with machinery or personnel, he answered:

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[1] "Q. Do you take any orders from Mr. Wood who sits here in the court room and is the personnel director of E. C. Atkins and Company?
"A. Yes; naturally, I work very closely with Mr. Wood, as he is personnel director of the plant and there can be much more efficient guarding of the plant and operation of the plant if we do work closely. I have never taken an order as such from him.
"Q. You try to cooperate?
"A. I try to cooperate to the best of my ability and he does the same for me."

"Q. Now, how do you receive the general orders for your duties, from what source?
"A. General orders are received from Captain Wetenhall of the Fifth Service Command, Cincinnati."

"Q. (Referring to violation of military orders.) To whom do you report such violations?
"A. I would report any violation, any serious violation, to Captain Wetenhall of Cincinnati.
"Q. And who instructs you to enforce orders?
"A. It would be the government."

"Q. Do any of the Military Police under your command take any orders from any officer, director, or agent of the Atkins company as such?
"A. No; they wouldn't take any orders. Just like myself, they would cooperate in any way they could, but they would only——
"Q. Suppose such cooperation involved deviation from such specific order which you had to give. Would they follow your specific order or would they cooperate?
"A. They would—that would be their orders—to follow mine; yes, sir.
"Q. You would have the same reaction towards such request of cooperation as you would if you had a specific order or a general order to the contrary from one of those superiors, is that right?
"A. Yes, sir. In those orders, it says, 'No conflicting interest.' It means a little different thing there but it means a lot besides. You would follow your Government orders first. They would have a much higher priority."

"Well, in a case like that, I would just turn him in, like anybody else. I would arrest him and turn him in because I am sworn to do that. I have sworn an oath.

"Q. Would you do the same with the president of the company?

"A. Yes, sir; I would.

"Q. And you own no responsibility to the president or any director of the company which would make you violate your oath to the Military?

"A. No, sir; there is no reason for that."

Johnston also identified three forms of passes which were issued to various employes, one for admission from the outside into the armor plate division, another for admission into the same division by an employe entering from another department, and another known as a gate pass, which permitted the entering and departure from a gate. No employe could enter a gate or a building until he had exhibited to a member of the guard the appropriate pass. Even an executive of the company could not enter a gate or go from one building to another without exhibiting his pass to a guard. These were military orders.

The statement in the Board's findings that respondent's personnel director "referred to the guards at the plants involved as respondent's employees" is also without substance. It is based solely upon the following questions and answers:

"Q. How many of your employees at the main plant are plant guards or Auxiliary Military Police?

"A. Thirty-two.

"Q. When you say your employees, they are your
550 employees only in the sense that you pay their wages, is that right?

"A. That is correct.

"Q. And you make the necessary pay roll deductions?

"A. That's right."

We think the conclusion is inescapable that the Board's findings based upon proof as to what actually happened is without substantial support. The proof shows without contradiction that respondent (1) paid the guards, but under the circumstances heretofore related, (2) had nothing to do with hiring and discharging other than making recommendations as to the former, and (3) exercised no control. True, the Board intimates that respondent failed to exercise the authority which it had, and stresses certain provisions in the documentary evidence which perhaps lend some color to the suggestion. We are of the view, however, that the employer-employe relationship must be determined from the actual situation as disclosed by the proof rather than from what the situation might have been. In this connection, we observe that the Board has called to our attention a number of its own decisions wherein it has decided that plant guards are employes.

Some of these cases we have studied, and we think the facts, especially as disclosed by the oral testimony on the matter of control exercised by the company, are quite different from those shown here. We are further of the view that this case must be decided on the facts contained in the record before us and not on the Board's decisions in other cases on different facts.

While we have heretofore made numerous references to the documentary proof, we think that it is entitled to further consideration. It is plain from the record that both respondent and the guard members formulated their activities largely upon the instructions contained in guard orders 1, 2, and 3. It is doubtful, at any rate there is nothing in the record to disclose, that they were even aware of some of the documents which the Board now relies upon and especially Circular No. 15, issued by the War Department March 17, 1943. (This Circular, as heretofore noted, was not introduced in evidence.) The guard orders were posted in various places at the two plants and were the orders under
551 which the guards actually worked. The importance attached to these orders is shown from the fact that they were blown up in photostatic replicas, "enlarged four times," that the plant guards could familiarize themselves with their provisions.

Guard order No. 1 had underlined for particular emphasis the following sentence: "No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission." There is not a word in such order which intimates other than that the guard members are entirely under the jurisdiction and authority of the military. They are told that they are subject to the Articles of War and court martial; that a commissioned officer of the United States Army has been placed in command, that the mission of the guard force is to provide protection for the plant, that a member is available for military use whether on or off duty, that protection of the plant and its production is essential to the successful prosecution of the war; that service begins with the date he is inducted into the military police, and that no member may resign without the written approval of the District Plant Guard Officer.

Guard order No. 2 states eighteen general orders which the member is required to be prepared to recite when directed by his superior officers. A comparison of these guard orders with the Basic Field Manual or Soldiers' Handbook, edition of July 23, 1941, issued by the War Department, shows that the duties, responsibility and discipline of a plant guard member is as strict as that imposed in any branch of the military service.

Guard order No. 3 authorizes the wearing of service stripes in accordance with Army regulation for services faithfully performed, and provides that "service will begin with the date that the plant guard was inducted into the Auxiliary Military Police."

The Board places strong reliance upon certain provisions contained in Circular No. 15 of the War Department, dated March 17, 1943. This document occupies twenty full pages of the Board's brief. A cursory reading of certain statements contained in this document seem to indicate that respondent had some measure of authority over members of the plant guard. Even if this be so, however, as we have heretofore shown, all authority and control was taken over by the Army and none was exercised by
552 respondent. Furthermore, we are of the view that this document when considered as a whole, and especially when considered in connection with other documents to which we have referred, leaves little room for the contention that respondent had the right but failed to exercise control.

We shall refer to a few of the more striking statements relied upon by the Board. The document states:

"Nothing in this circular will be construed as modifying the responsibility of plant management 'for providing adequate protection at all times against all hazards.'"

Certainly this statement constitutes no proof that respondent actually exercised any control of the plant guards or even that it had any right to exercise such control. Moreover, immediately following the statement just quoted, the plant guard officer is authorized to take appropriate action to correct any defective or inadequate performance "by the guard force of its ordinary protective duties." The document states:

"The mission of this guard force is to provide protection for this plant. In addition to its normal functions the force or any member thereof whether on or off duty is available for military use in any emergency * * *. No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission."

We are unable to discern any assistance in this statement for the Board's theory. It appears certain that the protection for the plant referred to is that which the government requires in behalf of the war effort. The statement recognizes that whether services rendered be normal or of an emergency character, they are rendered as members of the force. Another statement relied upon: "The Auxiliary Military Police will continue to function as formerly * * *. Control, therefore, will be exercised as heretofore through the plant management." This statement is also meaningless, in view of the fact that no plant guard system had theretofore been in existence at respondent's plant. Furthermore, as already shown, actual control of the guard force was taken over by the military.

Another provision emphasized by the Board is:

"Basically, the militarization of plant guard forces
553 does not change the existing systems of hiring, compensation, and dismissal; all remain primarily a matter between the guards and the plant managements."

The interpretation which the Board places upon this statement is immediately dispelled by the sentence which follows:

"A member of the Auxiliary Military Police may not be employed or dismissed and may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant's guard force would be impaired and declines to give his approval thereto."

How it can be said that respondent had the right to hire and dismiss when that prerogative was placed squarely in the Army is a theory we are unable to follow. In this connection, it is pertinent to note that this document also provides:

"The Auxiliary Military Police, as agents of the Federal Government, will not be subject to any state or municipal requirement which conflicts with their war-time duties."

We now refer to certain provisions of Circular No. 15 which really constitute the backbone of the Board's argument that members of the plant guard are employees of respondent and entitled to collective bargaining. It is provided:

"The status of the employer in respect to the employee benefits for the guard force is not changed. For example, social security, workmen's compensation, and employers' liability provisions remain unaffected."

Also:

"Auxiliary Military Police are permitted to bargain collectively, but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police. * * * If any proposed labor agreement is being considered which involves plant protection employees who are or may become members of the Auxiliary Military Police, the contracting parties will be urged to insert in such agreement a provision substantially as follows: 'It is understood that for the duration of the war this agreement is in all respects subject to the provisions of the directives of the War Department concerning military
554 organization of the plant guard forces * * * and that nothing contained in this agreement will be construed in any way to interfere with the organization, efficiency, training, and control by the War Department of the company guard force as an Auxiliary to the Military Police, nor to abrogate or interfere with the duties, responsibilities, and rights imposed by the War Department upon any employee in such Auxiliary Military Police.'"

We suppose that these provisions represent an effort on the part of the War Department to preserve, in the instant situation to create, the status of employer-employe relationship between members of the plant guard and respondent. It attempted to counteract the emasculating effect which its orders and directives had had upon the ordinary incidents attending such relationship. In our judgment, these provisions weaken rather than strengthen the position of the Board. The War Department, acting under the authority of the President's proclamation, created this guard

force. In doing so, it stripped the respondent and denuded members of the force of all the attributes common to the employer-employe relationship. Having created this situation, we think it was without authority to revitalize that which it had destroyed.

These provisions may indicate a willingness or even a desire on the part of the War Department that plant guards retain their status as employes, but even so, such desire cannot determine or alter the legal rights of the parties. Furthermore, the right to bargain is limited, if not destroyed, by the condition "but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police." This gratuity on the part of the War Department is on a par with that extended to a boy when he is given permission to swim, providing he stays away from the water. The requirement that "for the duration of the war" any agreement between plant guards and the plant must be subject to the directives of the War Department and will not interfere in any way with the duties and responsibilities imposed by the War Department is, in effect, the postponement of the right to bargain, as contemplated by the Act, until some future time.

The Board found, apparently in response to a contention
555 made by respondent, that the plant guards are not employes of the United States of America. From this it argues that because they are not employes of the government they must be those of respondent. We are not impressed with this argument. Neither do we think it is necessary for us to determine the technical status which they occupy with the federal government. That they sustain a relationship closely akin to that of a soldier cannot be doubted. The Certificate of Enrollment issued by the War Department provides that the applicant "has been voluntarily and duly enrolled as an Auxiliary to the Military Police with the rank of ---------- for service with the Army of the United States at E. C. Atkins and Company." Thus they are enrolled "for service with the Army." Moreover, the War Department itself in Circular No. 15, as already noted, designates them as "agents of the federal government." Irrespective, however, of their technical classification, there can be no doubt but that they are representatives of the federal government for the duration of the war and engaged in a service necessary for its successful prosecution. In our view, the relation which they sustain to the federal government is wholly incompatible with the theory that they are employes of respondent within the meaning and purpose of the National Labor Relations Act. We hold accordingly.

The further question, closely related to the one we have just decided, is whether the Board's order requiring respondent to bargain with the Union should be enforced. In considering this question, we assume, contrary to our holding, that members of the military guard are employes of respondent.

The purposes and policy of the National Labor Relations Act are well known and need not here be dwelt upon. The Board must

comply with the requirement "that the unit selected must be one to effectuate the policy of the Act, the policy of efficient collective bargaining." The capacity in which the Board acts is succinctly stated in National Licorice Co. v. N. L. R. B., 309 U. S. 350, 362:

"The Board acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining and by protecting the exercise by workers of full freedom of asso-
556 ciation, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment. * * *."

See also Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 265.

There is no room for argument but that any field open for bargaining between the Union and respondent is an extremely limited one. This must have been fully recognized by the War Department when it included in Circular No. 15 heretofore discussed the admonition that "no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police." As already pointed out, the Act contemplates "full freedom" on the part of the employes, with the right of "efficient collective bargaining." It is difficult to understand in view of the policy stated, how the right to bargain, not fully and efficiently but only in some limited fashion, can be contemplated by the Act.

A more cogent reason, however, why enforcement should not be allowed is that to do so would be or is likely to be inimical to the public welfare. The Board in its order entirely ignores the unusual status occupied by members of the plant guard by reason of their enrollment for service with the military. As heretofore shown, they are largely if not entirely under the control and direction of the War Department. They wear the uniform of a soldier, owe the same allegiance, receive their authority and commands from the same source, are enlisted for the duration of the war for service with the Army, and are engaged in the performance of a service essential to the successful prosecution of the war. Pertinent is the statement in Southern Steamship Co. v. N. L. R. B., 316 U. S. 31, 47:

"It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives."

In the recent cases of N. L. R. B. v. Jones and Laughlin Steel Corp. and N. L. R. B. v. Federal Motor Truck Co., decided December 8, 1944 (Circuit Court of Appeals, 6th Circuit), the court in denying enforcement orders under a situation similar to that of the instant case said:

"The national welfare is of supreme importance and
557 especially is this true in time of war. The evidence reflects the deep concern of the Government for the maintenance and protection of respondents' plants and for the integrity and volume of their products. * * * It must be kept in mind that in time of national peril, the preservation, protection and promotion of the national welfare is the paramount objective; and the Board must select bargaining agents with this in view."

We agree with the statement just quoted. Nothing should be permitted which will interfere in any degree or to any extent with the obligation which these guards have with the military. Membership in a union with the right to bargain might, in fact is likely to, do that very thing. To so state is not to cast any reflection upon the patriotism of the guard members. It is merely a recognition of that which is a matter of common knowledge.

In concluding, it is pertinent to observe that the enforcement of this order would be little more than an idle gesture. It is difficult to see how it could be of any practical benefit, and it might do immeasurable harm to the war effort and consequently to the public interest. The petition for enforcement is denied.

KERNER, Circuit Judge, concurs in the result.

558 In United States Circuit Court of Appeals,
Seventh Circuit

8669

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

E. C. ATKINS AND COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Order denying petition for enforcement

February 27, 1945

This cause came on to be heard on the transcript of the record from The National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the petition of the National Labor Relations Board for enforcement of its order entered in this cause on May 30, 1944, be, and the same is hereby, denied.

559 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1945

Supreme Court of the United States

No. 419, October Term, 1946

Order allowing certiorari

Filed December 23, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

730640—47

U. S. GOVERNMENT PRINTING OFFICE: 1947